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No. 96-842

In the Supreme Court of the United States

OCTOBER TERM, 1996

UNITED STATES OF AMERICA, PETITIONER

v.

JAMES HERMAN O'HAGAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED NOVEMBER 26, 1996
CERTIORARI GRANTED JANUARY 17, 1997

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EDITOR'S NOTE

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NOTICE

The following items have been omitted in printing this appendix because they appear on the following pages in the printed appendix to the petition for a writ of certiorari:

Magistrate's report and recommendation
(September 10, 1993) 40a

District court opinion on pending motions
(December 30, 1993) 73a

Court of appeals opinion (August 2, 1996) 1a

Court of appeals order denying rehearing
(November 13, 1996) 75a

In addition, the entire trial testimony of Thomas Tinkham is reprinted in the appendix to respondent's brief in opposition to the petition for a writ of certiorari, at 1a-39a.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 94-3714

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

JAMES O'HAGAN, DEFENDANT-APPELLANT

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
10/20/95	28(j) citation and hand out of the exhibit entitled "Timeline of Important Events" received and filed from Appellant James Herman O'Hagan in 94-3714, Appellee James Herman O'Hagan in 94-3856 TO COURT. [94-3714, 94-3856] [631805] (rla) [94-3714 94-3856]
8/2/96	THE COURT: George G. Fagg, Donald P. Lay, David R. Hansen. OPINION FILED by David R. Hansen PUBLISHED, DISSENT by George G. Fagg. [94-3714, 94-3856] [740365] (lcd) [94-3714 94-3856]

DATE	PROCEEDINGS
8/2/96	JUDGMENT: George G. Fagg, Donald P. Lay, David R. Hansen: The judgment of the lower court is REVERSED and REMANDED in accordance with the opinion. [94-3714] [740367] (lcd) [94-3714]
11/13/96	JUDGE ORDER: denying petition for Rehearing with suggestion for rehearing en banc [756682-1] filed by USA. Petition for panel Rehearing is also denied. Judge McMillian would grant the suggestion. [94-3714, 94-3856] Chief Judge Richard S. Arnold, Judge Magill, Judge Loken, and Judge Murphy took no part in the consideration or decision of this case. [779217] in 94-3714, 94-3856 (mls) [94-3714 94-3856]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

No. 0864-4: Cr. 4-92-219

UNITED STATES OF AMERICA, PLAINTIFF

v.

JAMES O'HAGAN, DEFENDANT

RELEVANT DOCKET ENTRIES

DATE		PROCEEDINGS
12/16/92	1	INDICTMENT assigned to Judge James M. Rosenbaum, referred to Magistrate Judge J. Earl Cudd by USA Lynn A Zentner & Christopher J Bebel. Counts filed against James Herman O'Hagen (1) count(s) 1-20, 21-37, 38-54, 55, 56, 57. Warrant issued for James Herman O'Hagen. 21 pgs (dd) [Entry date 12/17/92] [Edit date 12/17/92]
		* * * * *
9/10/93	50	REPORT and RECOMMENDATION by Magistrate Judge J. Earl Cudd date signed: 9/10/93 recommends motion by

DATE		PROCEEDINGS
		defendant James Herman O'Hagen to dismiss counts 21-54 for improper venue be DENIED [46-1] RR Ruling deadline set for 10/12/93 for James Herman O'Hagen (cc: all counsel) (31 pgs) (bw) [Entry date 09/10/93]
		* * * * *
12/30/93	86	ORDER by Judge James M. Rosenbaum that: 1. Deft's motion to dismiss Counts 21 through 54 of the indictment for improper venue is denied. 2. Deft's motion to dismiss the indictment, and his supplemental motion to dismiss, is denied. 3. Jury selection in this matter will commence, as previously determined, on January 3, 1994, and trial will commence January 11, 1994 (cc: all counsel) Date Signed: 12/30/93 (4 pgs) (bw) [Entry date 12/30/93]
		* * * * *
10/27/94	145	MINUTES: before Judge James M. Rosenbaum sentencing James Herman O'Hagen (1) count(s) 1-20, 21-37, 38-54, 55, 56, 57. Deft. is committed to the custody of the US for imprisonment for a term of 41 months. Deft. to be given credit for time served amounting to 23 months. Deft. has 18 months remaining. Deft. to pay $150,000 fine. Deft. to serve 3 yrs supervised release. The Court recommends the Duluth Prison Camp as place of incarceration. Deft. to pay a

DATE		PROCEEDINGS
		special assessment of $2,850.00 for counts 1-57 case terminated Court Reporter: Dawn Sampson (1 pg) (bw) [Entry date 10/31/94] [Edit date 11/07/94]
11/2/94	146	JUDGMENT/STATEMENT OF REASONS as to defendant James Herman O'Hagan by Judge James M. Rosenbaum (Copies dist'd) (5 pgs) (bw) [Entry date 11/02/94] [Edit date 11/07/94]
		* * * * *
11/7/94	149	NOTICE of Appeal to Eighth Circuit Court by defendant James Herman O'Hagan from the judgment entered on 10/27/94 (cc: all counsel) (5 pgs) (bw) [Entry date 11/07/94]

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA, PLAINTIFF, v. JAMES HERMAN O'HAGAN, DEFENDANT.	INDICTMENT (18 U.S.C. § 1341) (18 U.S.C. § 1956(a)(1)(B)(i)) (18 U.S.C. § 1957) (18 U.S.C. § 982(a)) (15 U.S.C. § 78j(b)) (15 U.S.C. § 78n(e)) (15 U.S.C. § 78ff(a)) (17 C.F.R. § 240.10b-5) (17 C.F.R. § 240.14e-3(a)) (21 U.S.C. § 853(p))

THE UNITED STATES GRAND JURY CHARGES THAT:

INTRODUCTION

1. At all times material and relevant to this indictment:

a. Grand Metropolitan PLC ("Grand Met") was a diversified corporation based in London, England, that engaged, through various subsidiaries, in a range of businesses, including the production and distribution of alcoholic beverages; owning and operating pubs and restaurants; processing and distributing milk and other food products; manufacturing and selling pet foods; retailing eye care products and services; and operating hotels. On or about October 4, 1988, Grand Met made a tender offer for the common stock of Pillsbury Company. Pursuant to the tender offer, Grand Met offered to purchase all outstanding Pillsbury common stock at $60 per share. The tender offer price of $60 per share represented a sizeable premium over the price of approximately $39 per share at which Pillsbury common stock was trading when the stock market closed on October 3, 1988, the day before the tender offer was made.

b. Pillsbury Company ("Pillsbury") was a publicly-held corporation based in Minnesota and was a diversified international food and restaurant company.

c. Cravath, Swaine and Moore ("Cravath") was a law firm based in New York which was retained by Grand Met in July of 1988 to effectuate the making of a tender offer for Pillsbury common stock.

d. Dorsey and Whitney was a Minnesota based law firm which was retained as local counsel in July of 1988 in connection with Grand Met's tender offer for Pillsbury common stock.

e. Thomas Tinkham was a Dorsey and Whitney partner, assigned to head the team of Dorsey and Whitney attorneys who provided legal services to Grand Met in connection with its tender offer for Pillsbury common stock.

f. Defendant JAMES HERMAN O'HAGAN was a partner in the Dorsey and Whitney law firm. Defendant JAMES HERMAN O'HAGAN maintained banking relationships at various financial institutions, including First Bank, Dakota County State Bank, Investors Savings Bank, Wayzata Bank and Trust, and National City Bank of Minneapolis. Defendant JAMES HERMAN O'HAGAN maintained stock brokerage accounts at various brokerage firms, including Robinson-Humphrey Company, Inc., an affiliate of Shearson Lehman Brothers, Inc.,

Janney Montgomery Scott, Inc. and Dean Witter Reynolds, Inc.

g. Northrup King Company ("Northrup King") was a company based in Minnesota. Northrup King was acquired by Sandoz, Ltd. ("Sandoz"), a company based in Switzerland. Following Northrup King's acquisition by Sandoz, Northrup King forwarded approximately $1,000,000 to Dorsey and Whitney to be placed in a trust account on behalf of Northrup King as part of a settlement between Northrup King and certain individuals who held Northrup King securities prior to its acquisition by Sandoz. Defendant JAMES HERMAN O'HAGAN represented Northrup King and was involved in settlement of the above-described lawsuit.

h. The Mayo Clinic was a Minnesota based health care services entity and Green Tree Acceptance, Inc. ("Green Tree") was a publicly-held corporation based in Minnesota. Both Green Tree and the Mayo Clinic were clients of Dorsey & Whitney. The specific legal services provided by the law firm to these clients were rendered, in part, by defendant JAMES HERMAN O'HAGAN.

THE SCHEME TO DEFRAUD

2. From on or before August 26, 1988, and continuing until approximately October 17, 1988, defendant JAMES HERMAN O'HAGAN engaged in a scheme and artifice to defraud Grand Met and Dorsey and Whitney in connection with the purchase and sale of securities by purchasing Pillsbury common stock and call options on Pillsbury common stock while in the possession of material, non-public information concerning Grand Met's future tender offer for Pillsbury common stock.

3. It was part of the scheme and artifice to defraud that defendant JAMES HERMAN O'HAGAN, directly and indirectly, used instrumentalities of interstate commerce, the mails and facilities of national securities exchanges to engage in acts which operated to defraud Grand Met and Dorsey and Whitney, in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal Regulations, Section 240.10b-5; and further in violation of Title 15, United States Code, Sections 78n(e) and 78ff(a), and Title 17, Code of Federal Regulations, Section 240.14e-3(a).

4. It was further part of the scheme and artifice to defraud that defendant JAMES HERMAN O'HAGAN, for the purpose of executing the above-described scheme and artifice to defraud, caused certain mail matter, namely, the confirmations of stock trades, to be placed in post offices and authorized depositories for mail, in violation of Title 18, United States Code, Section 1341.

5. It was further part of the scheme and artifice to defraud that defendant JAMES HERMAN O'HAGAN engaged in a monetary transaction affecting interstate commerce, using the proceeds of the above-described scheme to defraud, in an amount in excess of $10,000, in violation of Title 18, United States Code, Section 1957.

6. It was further part of the scheme and artifice to defraud that defendant JAMES HERMAN O'HAGAN engaged in multiple financial transactions involving a bank whose activities affected interstate commerce, which transactions involved the proceeds of the above-described scheme to defraud and were designed to conceal and disguise the true nature and source of the proceeds used, all in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

THE MANNER AND MEANS OF CARRYING OUT THE SCHEME TO DEFRAUD

7. It was part of the scheme and artifice to defraud that from on or before August 26, 1988, to on or about October 17, 1988, defendant JAMES HERMAN O'HAGAN intended to use and did use profits obtained by trading while in possession of material, non-public information to conceal his previous embezzlement and conversion of client trust funds.

8. Beginning on or about August 1, 1988, defendant JAMES HERMAN O'HAGAN sought to conceal his previous embezzlement and conversion of client trust funds by replacing these monies. The client trust funds in question amounted to $1 million and were transferred to Dorsey and Whitney in October of 1986 in connection with the settlement of a lawsuit involving Northrup King. These funds were to be held in a Dorsey and Whitney trust account on behalf of Northrup King until a final determination could be made regarding the distribution of these monies to individuals who held Northrup King securities prior to its acquisition by Sandoz.

9. As a Dorsey and Whitney attorney then representing the interests of Northrup King, defendant JAMES HERMAN O'HAGAN had an obligation to safeguard the client trust funds described in paragraph 8 above.

10. Despite the obligation of defendant JAMES HERMAN O'HAGAN to hold the funds described in paragraph 8 above in trust until the time and details for disbursement had been established, beginning on or about October 30, 1986, defendant embezzled and converted the client trust funds which had been forwarded to Dorsey and Whitney by Northrup King by transferring those funds to various bank accounts controlled by

him at First Bank, Dakota County State Bank, Investors Savings Bank, and National City Bank of Minneapolis.

11. In July of 1988, an Order was issued by the United States District Court for the District of Minnesota which required the distribution of the $1 million which Northrup King intended to be held in trust, as described in paragraph 8 above. Knowing that the District Court Order had been issued, defendant JAMES HERMAN O'HAGAN sought, beginning on or about August 1, 1988, to conceal the previous embezzlement and conversion of client trust funds by replacing monies he had taken. In early August of 1988, defendant JAMES HERMAN O'HAGAN replaced a portion of the embezzled and converted Northrup King funds by embezzling and converting $70,000, which was to have been held in trust on behalf of the Mayo Clinic, and by embezzling and converting $115,000 which was to have been held in trust on behalf of Green Tree. Defendant JAMES HERMAN O'HAGAN applied and caused to be applied the funds embezzled and converted from Mayo Clinic and Green Tree to Northrup King's benefit.

12. In or about August of 1988, defendant JAMES HERMAN O'HAGAN further concealed his previous embezzlement and conversion of client trust funds by replacing a portion of the embezzled and converted Northrup King funds, using the proceeds of a loan made to him by Dakota County State Bank.

13. As of August 15, 1988, approximately $550,000 of the embezzled and converted Northrup King funds had not yet been replaced.

14. It was part of the scheme and artifice to defraud that, following a request made by Cravath on or about July 13, 1988, that Dorsey and Whitney provide legal services on behalf of Grand Met in Minnesota in connec-

tion with Grand Met's tender offer for Pillsbury common stock, defendant JAMES HERMAN O'HAGAN learned of the future tender offer and engaged Thomas Tinkham, on or before August 26, 1988, in conversation relative to the tender offer and Dorsey and Whitney's representation of Grand Met in connection with that transaction.

15. It was further part of the scheme and artifice to defraud that defendant JAMES HERMAN O'HAGAN purchased Pillsbury common stock and call options on Pillsbury common stock after coming into possession of material, non-public information relating to the tender offer for Pillsbury common stock.

16. It was further part of the scheme and artifice to defraud that the defendant JAMES HERMAN O'HAGAN held the Pillsbury common stock and call options on Pillsbury common stock until the tender offer for Pillsbury common stock was publicly announced and then sold those securities at prices made higher by the tender offer announcement, realizing a profit of approximately $4,305,025, excluding commissions paid.

17. It was further part of the scheme and artifice to defraud that the defendant JAMES HERMAN O'HAGAN caused approximately $2 million of the profits he made by trading in Pillsbury securities to be transferred from his Robinson-Humphrey stock brokerage account to a First Bank account controlled by him.

18. It was further part of the scheme and artifice to defraud that the defendant JAMES HERMAN O'HAGAN utilized a portion of his profits, approximately $450,736.59, to conceal his previous embezzlement and conversion of Northrup King and Mayo Clinic client trust funds by causing the issuance of two First Bank cashier's checks totalling $450,736.59 and applying the proceeds of the cashier's checks to replace previously

embezzled and converted client trust funds. Neither cashier's check revealed the identity of the remitter.

19. It was further part of the scheme and artifice to defraud that the defendant JAMES HERMAN O'HAGAN utilized a portion of his profits, approximately $299,058.41, to reduce the balance on a loan made to him by the Dakota County State Bank, which loan proceeds had been used by the defendant, at least in part, to conceal his previous embezzlement and conversion of client trust funds.

MAIL FRAUD COUNTS 1 - 20

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 19 of this indictment as if fully set forth herein.

2. On or about the dates set forth in Counts 1 through 20 in the State and District of Minnesota and elsewhere, the defendant,

JAMES HERMAN O'HAGAN

having devised the aforesaid scheme and artifice to defraud, for the purpose of executing such scheme and artifice to defraud, did cause to be placed in the United States mails to be sent and delivered according to the directions thereon by the United States Postal Service, the items described below, each such use of the mails being a separate count of the indictment:

COUNT	APPROXIMATE DATE	NATURE OF MAIL MATTER	SENDER
01	August 29, 1988	Confirmation Slip for 100 Pillsbury October 40 Call Option Contracts	Robinson-Humphrey
02	August 30, 1988	Confirmation Slip for 100 Pillsbury October 40 Call Option Contracts	Robinson-Humphrey

COUNT	APPROXIMATE DATE	NATURE OF MAIL MATTER	SENDER
03	August 30, 1988	Confirmation Slip for 50 Pillsbury November 45 Call Option Contracts	Janney Montgomery Scott
04	August 31, 1988	Confirmation Slip for 100 Pillsbury October 40 Call Option Contracts	Robinson-Humphrey
05	September 1, 1988	Confirmation Slip for 300 Pillsbury October 40 Call Option Contracts	Robinson-Humphrey
06	September 2, 1988	Confirmation Slip for 222 Pillsbury October 40 Call Option Contracts	Robinson-Humphrey
07	September 6, 1988	Confirmation Slip for 200 Pillsbury October 40 Call Option Contracts	Robinson-Humphrey
08	September 7, 1988	Confirmation Slip for 21 Pillsbury October 40 Call Option Contracts	Robinson-Humphrey
09	September 7, 1988	Confirmation Slip for 79 Pillsbury October 40 Call Option Contracts	Robinson-Humphrey
10	September 7, 1988	Confirmation Slip for 97 Pillsbury October 40 Call Option Contracts	Robinson-Humphrey
11	September 7, 1988	Confirmation Slip for 81 Pillsbury October 40 Call Option Contracts	Robinson-Humphrey
12	September 8, 1988	Confirmation Slip for 50 Pillsbury November 45 Call Option Contracts	Janney Montgomery Scott

All in violation of Title 18, United States Code, Section 1341.

COUNT	APPROXIMATE DATE	NATURE OF MAIL MATTER	SENDER
13	September 8, 1988	Confirmation Slip for 300 Pillsbury October 40 Call Option Contracts	Robinson-Humphrey
14	September 9, 1988	Confirmation Slip for 202 Pillsbury October 40 Call Option Contracts	Robinson-Humphrey
15	September 12, 1988	Confirmation Slip for 198 Pillsbury October 40 Call Option Contracts	Robinson-Humphrey
16	September 19, 1988	Confirmation Slip for 100 Pillsbury November 40 Call Option Contracts	Robinson-Humphrey
17	September 20, 1988	Confirmation Slip for 75 Pillsbury November 40 Call Option Contracts	Robinson-Humphrey
18	September 20, 1988	Confirmation Slip for 100 Pillsbury October 45 Call Option Contracts	Robinson-Humphrey
19	September 20, 1988	Confirmation Slip for 5,000 shares Pillsbury Common Stock	Dean Witter Reynolds
20	September 21, 1988	Confirmation Slip for 125 Pillsbury November 40 Call Option Contracts	Robinson-Humphrey

SECURITIES FRAUD
COUNTS 21 – 37

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 19 of this indictment as if fully set forth herein.

2. On or before August 26, 1988, while a partner at the Dorsey and Whitney law firm, the defendant acquired material, non-public information relating to Grand Met's future tender offer for Pillsbury common stock.

3. After acquiring information relating to Grand Met's upcoming tender offer for Pillsbury common stock, which information the defendant knew to be material and confidential, and in breach of a duty of trust and confidence owed to Grand Met, and in breach of a duty of trust and confidence owed to the Dorsey and Whitney law firm, the defendant misappropriated the information relating to Grand Met's future tender offer for Pillsbury common stock and purchased Pillsbury common stock and call options on Pillsbury common stock.

4. On or about the dates set forth in Counts 21 through 37 in the State and District of Minnesota and elsewhere, the defendant,

JAMES HERMAN O'HAGAN,

for the purpose of executing the aforesaid scheme and artifice to defraud, knowingly and willfully by use of means and instrumentalities of interstate commerce, the mails and the facilities of a national securities exchange, directly and indirectly, did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, in contravention of Rule 10b-5 (17 C.F.R. § 240.10b-5) of the rules and regulations promulgated by the United States Securities and Exchange Commission, and did (a)

employ devices, schemes and artifices to defraud, and (b) engage in acts, practices and courses of business which would and did operate as a fraud and deceit upon Grand Met and Dorsey and Whitney in connection with the purchase and sale of securities, and as set forth in paragraphs 1 through 3 above, by purchasing Pillsbury common stock and call options on Pillsbury common stock in the following approximate amounts while in the possession of material, non-public information concerning Pillsbury:

COUNT	APPROXIMATE DATE	TYPE OF SECURITY	AMOUNT PURCHASED	BROKERAGE FIRM
21	August 29, 1988	October 40 Call Options	100 Option Contracts	Robinson-Humphrey
22	August 30, 1988	October 40 Call Options	100 Option Contracts	Robinson-Humphrey
23	August 30, 1988	November 45 Call Options	50 Option Contracts	Janney Montgomery Scott
24	August 31, 1988	October 40 Call Options	100 Option Contracts	Robinson-Humphrey
25	September 1, 1988	October 40 Call Options	300 Option Contracts	Robinson-Humphrey
26	September 2, 1988	October 40 Call Options	222 Option Contracts	Robinson-Humphrey

COUNT	APPROXIMATE DATE	TYPE OF SECURITY	AMOUNT PURCHASED	BROKERAGE FIRM
27	September 6, 1988	October 40 Call Options	200 Option Contracts	Robinson-Humphrey
28	September 7, 1988	October 40 Call Options	278 Option Contracts	Robinson-Humphrey
29	September 8, 1988	October 40 Call Options	300 Option Contracts	Robinson-Humphrey
30	September 8, 1988	November 45 Call Options	50 Option Contracts	Janney Montgomery Scott
31	September 9, 1988	October 40 Call Options	202 Option Contracts	Robinson-Humphrey
32	September 12, 1988	October 40 Call Options	198 Option Contracts	Robinson-Humphrey
33	September 19, 1988	November 40 Call Options	100 Option Contracts	Robinson-Humphrey
34	September 20, 1988	November 40 Call Options	75 Option Contracts	Robinson-Humphrey
35	September 20, 1988	October 45 Call Options	100 Option Contracts	Robinson-Humphrey
36	September 20, 1988	Common Stock	5,000 Shares	Dean Witter Reynolds
37	September 21, 1988	November 40 Call Options	125 Option Contracts	Robinson-Humphrey

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal Regulations, Section 240.10b-5.

SECURITIES FRAUD
COUNTS 38 – 54

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 19 of this indictment as if fully set forth herein.

2. Pursuant to a course of action involving a tender offer for Pillsbury common stock, and before defendant JAMES HERMAN O'HAGAN began a course of trading in Pillsbury common stock and in call options on Pillsbury common stock while in possession of material, non-public information, substantial steps were taken by Grand Met as more particularly set forth below:

a. On or about March 23, 1988, Grand Met retained Swander, Pace and Company as food industry consultants to assist in evaluating the assets of Pillsbury.

b. On or about June 20, 1988, Grand Met retained S. G. Warburg and Co., Inc., and S. G. Warburg and Co., Ltd., to act as financial advisors on the proposed tender offer.

c. On or about June 30, 1988, Grand Met retained Morgan Stanley as a financial advisor.

d. On or about July 12, 1988, Grand Met retained Cravath as special United States counsel.

e. On or about July 18, 1988, Grand Met retained Dorsey and Whitney as Minnesota counsel to provide legal services in connection with its tender offer for Pillsbury common stock.

f. On or about August 16, 1988, Grand Met's board of directors approved the acquisition of all outstanding common stock of Pillsbury by means of a tender offer.

g. On or about August 18, 1988, financing for Grand Met's proposed tender offer was established.

3. On or about the dates set forth in Counts 38 through 54, in the State and District of Minnesota and elsewhere, the defendant,

as part of the aforesaid scheme and artifice to defraud, knowingly and willfully engaged in fraudulent, deceptive and manipulative acts and practices in connection with a tender offer, namely, Grand Met's tender offer for Pillsbury common stock, in that, after Grand Met had taken a substantial step to commence a tender offer for Pillsbury common stock and while in possession of material information relating to such tender offer, which information he knew to be non-public and which he knew had been acquired directly and indirectly from (1) the offeror, Grand Met, and (2) a person acting on behalf of Grand Met, namely, Thomas Tinkham, he purchased and caused to be purchased Pillsbury common stock and call options on Pillsbury common stock without public disclosure first being made by press release and otherwise of the information he had obtained, together with the source of such information, within a reasonable time prior to the purchases set forth below:

COUNT	APPROXIMATE DATE	TYPE OF SECURITY	AMOUNT PURCHASED	BROKERAGE FIRM
38	August 29, 1988	October 40 Call Options	100 Option Contracts	Robinson-Humphrey

COUNT	APPROXIMATE DATE	TYPE OF SECURITY	AMOUNT PURCHASED	BROKERAGE FIRM
39	August 30, 1988	October 40 Call Options	100 Option Contracts	Robinson-Humphrey
40	August 30, 1988	November 45 Call Options	50 Option Contracts	Janney Montgomery Scott
41	August 31, 1988	October 40 Call Options	100 Option Contracts	Robinson-Humphrey
42	September 1, 1988	October 40 Call Options	300 Option Contracts	Robinson-Humphrey
43	September 2, 1988	October 40 Call Options	222 Option Contracts	Robinson-Humphrey
44	September 6, 1988	October 40 Call Options	200 Option Contracts	Robinson-Humphrey
45	September 7, 1988	October 40 Call Options	278 Option Contracts	Robinson-Humphrey
46	September 8, 1988	October 40 Call Options	300 Option Contracts	Robinson-Humphrey
47	September 8, 1988	November 45 Call Options	50 Option Contracts	Janney Montgomery Scott
48	September 9, 1988	October 40 Call Options	202 Option Contracts	Robinson-Humphrey
49	September 12, 1988	October 40 Call Options	198 Option Contracts	Robinson-Humphrey
50	September 19, 1988	November 40 Call Options	100 Option Contracts	Robinson-Humphrey
51	September 20, 1988	November 40 Call Options	75 Option Contracts	Robinson-Humphrey
52	September 20, 1988	October 45 Call Options	100 Option Contracts	Robinson-Humphrey
53	September 20, 1988	Common Stock	5,000 Shares	Dean Witter Reynolds
54	September 21, 1988	November 40 Call Options	125 Option Contracts	Robinson-Humphrey

All in violation of Title 15, United States Code, Sections 78n(e) and 78ff(a), and Title 17, Code of Federal Regulations, Section 240.14e-3(a).

MONEY LAUNDERING
COUNT 55

1. The grand jury realleges and incorporates by reference paragraphs 1 through 19 of this indictment and Counts 1 through 54 of this indictment as if fully set forth herein.

2. On or about October 5, 1988, in the State and District of Minnesota and elsewhere within the United States, the defendant,

JAMES HERMAN O'HAGAN,

did knowingly and willfully engage and attempt to engage in a monetary transaction, affecting interstate and foreign commerce, in criminally derived property of a value greater than $10,000, that is, the transfer by wire of funds approximating $2 million, such property having been derived from a specified unlawful activity, that is, mail fraud and fraud in the sale of securities; all in violation of Title 18, United States Code, Section 1957.

MONEY LAUNDERING
COUNT 56

1. The grand jury realleges and incorporates by reference paragraphs 1 through 19 of this indictment and Counts 1 through 54 of this indictment as if fully set forth herein.

2. On or about October 6, 1988, in the State and District of Minnesota, the defendant,

JAMES HERMAN O'HAGAN,

did knowingly and willfully conduct and attempt to conduct a financial transaction involving the use of a financial institution which was then engaged in, and the activities of which affected, interstate and foreign commerce, in that, defendant obtained from First Bank a cashier's check in the approximate amount of $380,736.59 to replace the Northrup King client trust funds he had previously embezzled and converted, which sum of approximately $380,736.59 involved the proceeds of a specified unlawful activity, that is, mail fraud and fraud in the sale of securities, knowing that the transaction was designed in whole and in part to conceal and disguise the nature and source of the proceeds of said specified unlawful activity and that while conducting and attempting to conduct such financial transaction the defendant knew that the property involved in the financial transaction, that is, funds in the amount of approximately $380,736.59, represented the proceeds of some form of unlawful activity, namely, mail fraud and fraud in the sale of securities; all in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

MONEY LAUNDERING
COUNT 57

1. The grand jury realleges and incorporates by reference paragraphs 1 through 19 of this indictment and Counts 1 through 54 of this indictment as if fully set forth herein.

2. On or about October 6, 1988, in the State and District of Minnesota, the defendant,

JAMES HERMAN O'HAGAN,

did knowingly and willfully conduct and attempt to con-

duct a financial transaction involving the use of a financial institution which was then engaged in, and the activities of which affected, interstate and foreign commerce, in that, defendant obtained from First Bank a cashier's check in the amount of approximately $70,000 to replace the Northrup King and Mayo Clinic client trust funds he had previously embezzled and converted, which sum of approximately $70,000 involved the proceeds of a specified unlawful activity, that is, mail fraud and fraud in the sale of securities, knowing that the transaction was designed in whole and in part to conceal and disguise the nature and source of the proceeds of said specified unlawful activity and that while conducting and attempting to conduct such financial transaction the defendant knew that the property involved in the financial transaction, that is, funds in the amount of approximately $70,000, represented the proceeds of some form of unlawful activity, namely, mail fraud and fraud in the sale of securities; all in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

FORFEITURE

1. The grand jury realleges and incorporates by reference paragraphs 1 through 19 of this Indictment and Count 55 as if fully set forth herein.

2. The defendant JAMES HERMAN O'HAGAN did knowingly and willfully engage and attempt to engage in a monetary transaction, affecting interstate and foreign commerce, in criminally derived property of a value greater than $10,000, that is, the transfer by wire of funds approximating $2 million, such funds having been derived from a specified unlawful activity, namely, mail fraud and fraud in the sale of securities, in violation of Title 18, United States Code, Section 1957. As a result of the foregoing offense, defendant JAMES HERMAN O'HAGAN shall forfeit to the United States all property, real and personal, involved in the aforestated offense and all property traceable to such property, including but not limited to the approximate amount of $2 million in United States currency and all interest and proceeds traceable thereto, in that such sum in aggregate is property which was involved in the aforestated offense and is traceable to such property, in violation of Title 18, United States Code, Section 1957, pursuant to Title 18, United States Code, Section 982(a).

3. If any of the property described in paragraph 2 above, namely the approximate amount of $2 million, as a result of any act and any omission committed by the defendant —

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; and

(e) has been commingled with other property which cannot be divided without difficulty;

the United States is entitled to forfeiture of any other property of defendant JAMES HERMAN O'HAGAN up to the value of $2 million as described in paragraph 2 above, pursuant to Title 21, United States Code, Section 853(p).

A TRUE BILL

UNITED STATES ATTORNEY FOREPERSON

GOVERNMENT EXHIBIT 53
DORSEY & WHITNEY CONFIDENTIALITY POLICY

05-1-85

A. Confidentiality Statement

Lawyers are fiduciaries, meaning that their relations with their clients are based upon trust and confidence. Lawyers represent the interests of each of their clients to the utmost of their ability, and do not use their position of trust and confidence to further anyone's private interests.

A lawyer never discusses a client's business with outsiders, but considers it strictly confidential.

So sacred is the relationship between lawyer and client that information given to a lawyer by a client is a "privileged communication" — that is, the lawyer cannot be compelled to testify about it, and its unauthorized disclosure is unlawful. Some information to which our office has access is protected by court order; improper disclosure of such material would be punishable by contempt proceedings. Other information may be valuable as a trade secret; disclosure would cause substantial financial loss to a client.

A lawyer's responsibility to keep a client's confidences extends to all employees.

The need for confidentiality of information cannot be overemphasized. *It is highly improper for office personnel to discuss a case outside the office, even with members of their immediate families.* Irreparable harm can result from discussion of a client's affairs, even if no names are mentioned. Unauthorized communication by non-lawyer personnel may properly be regarded as grounds for discipline or dismissal.

It has always been the Firm's policy to enforce strict confidentiality of the affairs of its clients.

In order to preserve the security of files and information, the following rules are to be observed:

1. Information in office files shall *never* be disclosed except upon express authorization from one of the lawyers concerned with the matter or, in the absence of such lawyer, express authorization from another lawyer in the office.
2. Documents, files, securities, abstracts or other valuables held by the office may be given only to persons who are properly identified or vouched for, and then only in return for a signed receipt and only when authorized by one of the lawyers handling the matter or, in the absence of such lawyer, by another lawyer in the office.
3. During a lawyer's absence, no one shall be admitted to his or her office without prior notification being given to the lawyer's secretary so that papers on the desk and in the office may be removed or covered; or, if the secretary is absent from the office as well, another secretary should first check the lawyer's office and remove cover any papers.
4. At the request of the responsible lawyer, all confidential papers will be destroyed when no longer needed.
5. One client's business is never to be discussed with another client; as a general policy, it is best never to mention a client's name to anyone.
6. All Firm personnel have been informed of the following Firm policy and procedure with respect to investments in securities of publicly held clients — that is, clients whose commercial paper is publicly

available for purchase. All new employees are specifically so informed by our Personnel Department as a separate point of information during their orientation.

Investment in Securities of Publicly Held Clients

In order to further ensure the confidentiality of certain information concerning clients, the Firm has established policies and procedures to prevent the use of confidential information in connection with purchasing or selling securities of our clients. A reminder of this obligation is embodied in the following release of the Securities and Exchange Commission issued in April, 1977:

"SECURITIES EXCHANGE ACT OF 1934
"Release No. 1343/April 8, 1977

"Insider Trading by Law Firm Employees

"The nature of the services performed by law firms on behalf of their clients whose securities are publicly traded or who deal in such securities often results in those law firms receiving information which has not yet been released to the public but which is of great significance to the securities markets. The antifraud provisions of the Federal securities law, as well as the high ethical standards required of those engaged in the practice of law, mandate that the confidentiality of non-public information be preserved and in particular that such information not be used as the basis for trading in securities. This obligation extends not only to partners in the law firm but also to associated lawyers and service personnel employed by the Firm.

"It has come to the attention of the Commission that in certain instances law firm personnel (1) may have abused their position of trust and confidence by trad-

ing in securities while in possession of material nonpublic information obtained in the course of their employment, or by revealing such information to others who have engaged in securities transactions on the basis of such information.

"Law firms, like others which have confidential information in their possession that may affect the securities trading markets, have an affirmative obligation to safeguard such information.

"While the Commission recognizes that no procedures can guarantee that individual employees will not take unfair advantage of their position, law firms are encouraged to establish policies and procedures regarding confidential information and take steps to ensure that all firm personnel are familiar with those policies, including the serious consequences that may result from conduct violating such policies.

"By the Commission.

George A. Fitzsimmons
Secretary"

05-1-85

"(1) In these instances, the personnel involved were legal secretaries and stenotypists who had access to confidential communications from clients of the firm."

IT HAS ALWAYS BEEN THE POLICY OF THE FIRM TO FORBID THE UTILIZATION OR APPEARANCE OF THE UTILIZATION OF INSIDE INFORMATION OF PUBLICLY-HELD CLIENTS BY LAWYERS OR SUPPORT STAFF PERSONNEL OF THE FIRM OR THE TIPPING OF ANY SUCH INFORMATION TO OTHERS.

As indicated in the SEC release reprinted above, the use of such inside information or the tipping of such inside information to others violates both federal and state securities laws and can result in action by governmental agencies against the Firm as well as against the individuals involved. Even where inside information was, in fact, *not* utilized by the individual buying or selling a security, the possession of inside information by other persons in the Firm may lead to the *appearance* that such inside information was made available to the individual who bought or sold the security. False appearances regarding the utilization of inside information can be as damaging to the Firm as the actual utilization of such information.

Procedures

In view of the foregoing, the following procedures are established by the Firm with respect to the personnel of the Firm (both lawyers and support staff) buying or selling securities of publicly-held clients:

> *No lawyers or support staff personnel of the Firm (or the spouses or minor children of such personnel) may buy or sell securities of a publicly-held client of the Firm without first consulting the billing lawyer for that client to determine whether the Firm possesses material non-public information about the client which makes such trading inadvisable.* If advised that such information exists, the person must delay trading in the securities of that client until advised by the billing lawyer that the information has been made public. The term "publicly-held client" refers to publicly-held corporations or other publicly-held entities (including municipalities which issue bonds or other securities to the public) which we represent generally or which we represent in connection with their securities work.

Partners and associates are also reminded of the provisions of Section 13.10 of the Lawyers' Policy Manual, which requires advance approval by the Professional Personnel Committee of certain investments in or with clients, except where the investment is made through a broker in a regular market transaction.

Implementation and Demonstration of Compliance

Any lawyer or support staff personnel of the Firm should, prior to buying or selling a security of a publicly-held company, check with the File Room to determine whether the publicly-held company is a client of the Firm. If the publicly-held company is a client of the Firm, the person should then consult the billing lawyer for that client to determine whether the Firm possesses material non-public information about the client which makes trading inadvisable.

GOVERNMENT EXHIBIT 56

DORSEY & WHITNEY

NEW FILE REQUISITION

CHECK EACH ITEM WHICH IS APPLICABLE TO THIS FILE:

File Type		Bundle Type		File Folder Type		Forms Required/Attached*	
X	Standard Client/Matter	X	Correspondence	X	Red Rope	X	New Client Screening Form
	Computer Number Only		Legal		Manilla Expandex		Litigation Screening Form
	Office Account				Manilla Pocket		Conflict Check Report
	Trust File (Enter "P" & "T" #'s)				No Folder		FARA (Not attached)**
	Bond File (Enter "C" No.)						FLRA (Not attached)**

**No registration under the Foreign Agents Registration Act (FARA) or Federal Regulation of Lobbying Act (FRLA) required

CLIENT/MATTER INFORMATION

*Client Name: Cravath, Swaine & Moore
Bill Name: (same)
Street Address: One Chase Manhattan Plaza
City, State, ZIP: New York, NY 10005
*Client No: 151630
#4

*Matter Title: General
Description of Work: General Matters
Matter No: 5
*Area of Law:
Billing Matter Title (Provide when time will not be billed to this new matter.)
*Area of Law Code:
Billing Matter No:
*Billing Attorney: Peter Dorsey
Initials: PD
*Number: 0151
*Attorney in Charge: Thomas Tinkham
Initials: TT
Number: 0330
Department: Trial
Department Code: 03
Office: Hp&c
Office Code: 01
Others directly associated time to this matter: Michael Sweeney

BILLING INFORMATION

Send Bills To: Alan Parker
Street Address: Cravath, Swaine & Moore
City, State, ZIP: One Chase Manhattan Plaza
Special Billing Instructions: New York, NewYork 10005

FEE TYPE			
X	Regular		Allowed by Court
	Reginer		Special Rate
	Contingent		Pro Bono

*CONFLICT CHECK INFORMATION

Attorney Requesting Check:
Check No: 16000

List of known persons, businesses or other entities who are (or may come to be) involved in this matter. Also list (briefly) the relationship each has to our client: e.g., subsidiary, officer, family member, adverse party, etc. If you have a litigation matter, all adverse parties must be listed.

Name Codes
01. Client
02. Client (A/K/A or D/B/A)
03. Client (If formerly Known As)
04. Client (More Information Fol)
05. Adverse Party (Actual or Potential)
06. Certainty (Actual or Potential)
07. Non-Client Party to Transaction
08. Parent Company
09. Business Affiliate — Subsidiary/Division
10. Majority Stockholder
11. Officer/Director
12. Member (A/K/A or D/B/A)
13. Spouse (If formerly Known As)
14. Family Member
15. Trust/Estate

Name | Code

THIS MATTER HAS BEEN CLEARED WITH ROBERT STRUYK

This work approved? Yes No If work not approved, explain how they were resolved:

Signature: Tom Tinkham
*Billing Attorney:
*Approving Partner:
All of the names found have been checked against Dorsey conflict reports.
Said Oasis
Date File Opened: 9/4/89

NOTE: Information with asterisk is Required

BILLING

GOVERNMENT EXHIBIT 56 97-319

DORSEY & WHITNEY
CLIENT SCREENING FORM

This form must be completed for each new client. It is not necessary to complete this form for existing clients. Representation of a new client cannot be accepted until this form is completed, reviewed and approved. The Records Center will not assign a new client number without an approved form. All items must be completed. Conflicts must be checked before this form is submitted. The completed form should be sent to Mr. Strunk.

Client name: Cravath, Swaine & Moore

Client address: One Chase Manhattan Plaza
New York, NY 10005

Attn: _____

State of incorporation/residence: _____

Client is: ☐ Individual ☐ Corporation ☐ Trust
☒ Partnership ☐ Sole Proprietorship ☐ Cooperative
☐ Political Subdivision ☐ Other: _____

List client affiliations or relationships with other clients of the firm: _____

Description of client's business: Law firm

Is client publicly held? Yes ___ No X If so, please request a copy of its latest annual report.

If this is a going business, approximate annual revenues and number of employees: _____

List the key contacts at client: Alan Parker

If a corporation, list officers and directors: _____

Name of present/former attorney: _____ Name of accountant: _____

Explain in detail the subject matter/scope of proposed representation:
General matters

List business references, if available: _____

Did you discuss fees and is the client able to pay? yes How much of a retainer is the client willing to pay? _____

Do we expect billings to be in excess of $1,000 annually? _____

Describe other potential matters we can expect from this client: _____

Please provide the following information if this was a referral: _____

Name of person referring person _____
Name of firm _____
Street address _____
City, state and zip code _____

Do you perceive any unusual risk in the representation of this client? No

Why do you believe we should represent this client? _____

Provide any additional information that would be useful in serving this client: _____

WSW Business Profile (attached)

Date: 2/29/88

Approved: _____
Signature Partner

ms

SEND TO: TERRY KEARNS
(16W)

WRITE-OFF REQUEST
for
Unbilled Time and Disbursements
(WITH Recorded Billing Memo attached)

TO: ACCOUNTING - In Duplicate

FROM: Peter Dorsey

DATE: October 6, 1988

Client and Matter Names: Cravath, Swaine & Moore — General

Client and Matter Numbers: 151680 — 5

____ Total write-off is $1000 or less of unbilled time and disbursements.

$_____ unbilled time $_____ unbilled disbursements

_____
Signature of Billing Attorney

_____
Signature of Partner Approving Associate/Staff Attorney's Write-Off Request

---

____ Total Write-off is $1,001 to $5,000 of unbilled time and disbursements.

$_____ unbilled time $_____ unbilled disbursements

REASON:

_____
Signature of Billing Attorney

AND

_____
Signature of Billing Review Partner

XX Total write-off is $5,001 to $25,000 of unbilled time and disbursements.

$ 13,628.80 unbilled time $ 647.23 unbilled disbursements

REASON:

After becoming preliminarily involved in this matter, we decided to withdraw and, therefore, are not in a position to bill the fees or disbursements incurred prior to our withdrawal. (Additional time and disbursements also be written off).

Signature of Billing Attorney

Signature of Billing Review Partner J.O'Hagan

Signature of Department Group Head J.Levine

___ Total write-off request is over $25,001 of unbilled time.

$_____ unbilled time $_____ unbilled disbursements

REASON:

21804
#21315T
T= 13 628.80
D= 647.23

Signature of Billing Attorney

Signature of Billing Review Partner

Signature of Department Group Head

Requires Finance Committee Approval

GOVERNMENT EXHIBIT 75
(O'HAGAN DEPOSITION TRANSCRIPT)

[80]

Q. What precipitated your renewed interest in Pillsbury in July?

A. As I recall Bill Parks called me and said that, you know, there was a rumor that someone is accumulating Pillsbury, and he said it is all over the tape that it's Beatrice Company, and he said — you know, I may have talked to Bill Parks in March. I don't remember, but, you know — but as I remember he is the first one in July that specifically brought it up again with me.

Q. And did he recommend that you buy at that time?

A. I don't' I remember if he recommended a buy but — well, certainly any time he tells me anything he is sort of recommending that I buy it, but I don't remember him specifically saying to buy some amount, but I think he told me to take a look at it.

Q. And what did you do to take a look at it?

A. I asked Stewart about it. I think I asked Considine about it too, you know. I don't specifically recall, but I'm sure I did.

Q. Just so I understand what Mr. Parks said, when you say "all over the tape", what did you understand him to [81] mean by that?

A. He had a research report on the tape or there is rumors on the tape. I think, you know, I actually had something from Parks that I think he gave me, you know, that said, you know, you know, statements like "Pillsbury is up a point today on rumors Beatrice is going to buy them", and then there is something on the

tape saying "Pillsbury is a takeover candidate with a value of 50 to 54". I think a specific statement, I don't remember by whom, to the effect that Pillsbury is the most logical candidate in the food industry, and if there is going to be any merger in the food industry, Pillsbury is it.

Q. And you remember seeing this in document form?

A. I remember he gave something to me.

Q. Mr. Parks did?

A. Yeah. If he didn't give something to me, he certainly talked about it, I mean.

Q. And you have a recollection specifically that the rumored bidder was Beatrice?

A. Oh, yes, absolutely. I mean that was on the tape.

[83] * * * * *

Q. What happened when you talked to Stewart?

A. Stewart said "I'll check it out".

Q. And what happened when he checked it out?

A. As I recall the next morning Stewart called me and said "You've got to buy some Pillsbury".

Q. And did he tell you what basis he had for thinking you should buy Pillsbury?

A. Yeah, he says I think that this is, you know, a viable rumor.

Q. I'm sorry?

[84]

A. A viable rumor.

Q. Did he tell you what, if anything, he did to check that out?

A. I don't recall if he said.

Q. Do you remember anything else about the discussion aside from the recommendation itself?

A. He said "You ought to buy 5,000 shares". I said, "Have I got enough money for that?" And he said I did and next I remember is he — I don't think he called me back. I think Janice called me back and told me what the price was.

Q. Do you remember what the price was?

A. No, I don't. It's on the statement.

[89] * * * * *

Q. That's right. The ones for which you have the account statements before you.

Before we went off the record we were discussing the circumstances leading up to the first purchase of Pillsbury. What was the date of that purchase?

(Pause.)

A. Settlement date was August 3 which means that trade date has probably July 27 assuming normal five business days.

[104] * * * * *

Q. When was the next time that you had a discussion with anybody about Pillsbury?

A. To the best of my recollection the next time I had a discussion with anybody about Pillsbury would have been on August 17th.

Q. And what makes you say August 17th as the date?

A. I remember specific. It was the day before I bought the calls.

Q. I see.

[105]

A. Now I'm not saying that I didn't talk to Parks or somebody or, you know, about Pillsbury in between, but the next time I specifically remember something.

Q. Um-hum. Well, do you remember between the time that you sold and the time that you recall considering buying again, do you remember hearing anything else about Pillsbury?

A. I do not.

Q. What happened on the 17th?

A. I was having a conversation with Jim Considine and, as I testified to earlier, he is an institutional broker for Montgomery, and his territory is England. His customers are England and Scotland as I understand it. He is free to call on any institution in England or Scotland or something. And he told me, he said, "Have you heard the new rumor on Pillsbury?" And I said "no". He said, "Well, there is a new rumor that a company in London or England, I've forgotten what he said, by the name of Grand Met or Grand Metropolitan may be interested in acquiring Pillsbury", and he said the rumor makes some sense. He said go back and look at the *Wall Street Journal* of last Friday and there is an article in there on Grand Met, and that article talks about them selling their hotels and the speculation is that they may use the money to buy a branded food or drink company.

Q. Did he say anything else?

A. That's all I can remember him saying.

[125] * * * * *

BY MR. DETORE:

Q. What was the next conversation you recall concerning Pillsbury that you had with anybody after the purchases on the 18th?

[126]

A. I had a conversation with Mr. Considine that day.

Q. And what happened in that conversation?

A. My recollection is that I called him around noon or thereabouts and talked to his — I guess it's his sales assistant.

Q. And what is his sales assistant's name?

A. I can't remember. His secretary, whatever. And she said Jim was having — too busy to talk to me or something to that effect, and I called him back after the close and I talked to him about Pillsbury.

Q. You talked to him about what?

A. I talked to Mr. Considine after the close about Pillsbury.

Q. And what did he say?

A. I'm not sure whether he — it was in this conversation or a subsequent conversation, but he told me that he had had his biggest day ever, and that he had a customer buy 250,000 shares of Pillsbury, and that he had had some problems in filling the order. He had bought a little bit at 36 1/8th, a little bit at 36 5/8ths, and he bought a couple hundred thousand shares at 37, and that then the specialists had taken the stock down and closed it at 36 1/4.

Q. Did he identify who the customer was?

A. No. And this conversation may have been the next day too. I don't recall whether it was that day specifically. [127] I think it was that day.

[128] * * * * *

Q. What was the next conversation you had with anyone concerning Pillsbury after the conversation with Mr. Considine?

A. The next morning I recall having a conversation with Ms. Kinnahan.

Q. Who initiated that conversation?

A. I think I was out of the office in St. Paul or something, and I think she called the office and left a message, and I called her back.

Q. And —

A. That's my best recollection.

Q. And what did you say and what did she say?

[129]

A. She said, you rumor on Pillsbury wasn't a rumor. She said, you know, this company in England announced that they were interested in acquiring Pillsbury, and she said, isn't it in the Minneapolis papers? She kind of has the impression that Minneapolis is in the hinterland someplace. And I said, I don't know, I didn't see it in the paper this morning. I said, who told you they announced it? She said, I saw it on Dan Dorfman's show last night. I said, well, you know, Dorfman really talks about rumors, doesn't he? And she said, this wasn't a rumor, it was an announcement.

Q. Did anything else transpire in the conversation?

A. Not that I recall.

Q. Did you tell her that you had purchased Pillsbury options?

A. You mean the day before?

Q. No, on this occasion — you had told her the day before?

A. I don't recall whether I told her or not.

Q. Do you remember whether you —

A. At some point I told her I purchased some Pillsbury options, but I don't remember when I did.

Q. What, if anything, did you do after that conversation?

A. I called Janice and told her to buy another 100 calls.

[130]

Q. When you — how long after you talked with Ms. Kinnahan did you call Janice?

A. I don't — quite candidly, my recollection is I called Janice before I talked to Ms. Kinnahan. I really bought the calls based upon what Considine had told me.

Q. Did anything happen between the 18th and the 19th that caused you to make, you know, the second 100 purchase?

A. Yeah, he had told me that a customer bought 250,000 shares.

Q. Oh, I see. I thought you said that was after the conversation with —

A. No.

Q. Is there more than one conversation with — the conversation with Mr. Considine about the 250,000 took place after the close, as I understand?

A. Yes.

Q. And then you are not certain whether the conversation with Ms. Kinnahan was before or after the order?

A. I'm not certain. It may have been after the order. I remember being very surprised that, you know, she told me the company had announced that they were acquiring Pillsbury or considering acquiring Pillsbury.

[133] * * * * *

Q. What happened?

A. As to the debate, you mean?

Q. That's right.

A. Stewart returned from vacation on Monday and some time on Monday I talked to him, and he said, I see you bought a couple hundred calls. He said, did you buy them on the Kelly rumor or on the Dorfman rumor? And I said, what the hell is the Kelly rumor? And he said, there is a rumor that — I hadn't heard of Kelly. Kelly apparently is chairman or something of Beatrice. And he said, there is a strong rumor that Kelly is going to announce something on Pillsbury soon, and I said, what is the Dorfman rumor? And he said, one of my customers told me that Dorfman had talked about some British company last week. And so I said, well, my broker in Washington tells me that it was a company announcement. And as I remember, Stewart saying, I don't know, my customer told me it was a rumor. And that is what the debate was.

[140] * * * * *

Q. What was the next time you learned anything new concerning the rumor in Pillsbury?

A. Which rumor?

Q. The rumor we are discussing now concerning Grand Met.

A. Well, on Monday I talked to Stewart and he asked me whether I had bought the calls, the earlier calls, on the basis of the Kelly rumor or the Dorfman rumor, and then he went [141] on to say, you know, that he had good information that Kelly was going to do something near term and that we ought to buy some more Pillsbury.

Q. Did he elaborate in any way on, first of all, what the source of his information was concerning Kelly?

A. No.

Q. Did he elaborate in any way on the issue of what the near future meant?

A. On the near future, soon.

Q. Did he make a recommendation concerning a purchase to you at that time?

A. Yes .

Q. And what did he say?

A. "Why don't you buy some more calls".

MR. BRAVERMAN: Did he express a view with regard to the Grand Met rumor?

THE WITNESS: Yeah, he kind of discounted it.

BY MR. DETORE:

Q. Did he tell you why?

A. He said, well, I don't know anything about it. It's a Dorfman, but he said — he said it could be — he said it could be helpful, and he said, it probably has flushed Kelly out. I said, what do you mean? He said, well, you know, you get this out that England announcing they are interested in acquiring Pillsbury is going to force Kelly's hand, which I [142] think is what his rationale was, whether there was going to be an announcement soon.

Q. And did you make purchases as a result of the recommendation he made that day?

A. Yeah, we bought a hundred calls on Monday.

MR. BRAVERMAN: That is Monday, the 22nd of August?

THE WITNESS: Yes.

[143] * * * * *

Q. What was the next discussion that you recall having after you purchased the options on the 22nd concerning Pillsbury?

A. Well, I may have had — the next one I specifically remember concerning Pillsbury? The next day, true to Stewart's prediction, it was on the tape that Kelly was resigning from Beatrice and two of his people resigning with him, and that they were resigning apparently to put together a [144] bid and the reported target was Pillsbury.

[145] * * * * *

Q. As I understand it you had a conversation then on the 23rd in which you learned about the tape story on it, and then if I understand your testimony, it was the next day that you talked to Mr. Evans concerning it?

A. I remember him calling me, you know, early in the — relatively early in the morning, I guess, for me, 8:30 or something, and reading to me from the *Wall Street Journal.*

Q. Was anything else said during the conversation?

A. Yes, he says, I bought some Pillsbury stock for my own account and I think you ought to buy some. I mean he says, you really don't have much of a position. You got, you know, $15,000 position or something and you ought to buy some. He said, I bought 5,000 for my own account and I said, well, all right, go ahead and buy 5,000 Pillsbury. And he said — he talked about — he said, I think we ought to buy some more calls, and I said, all right, go ahead and buy a hundred.

Q. Did he give you any reason why he was recommending that you buy stock rather than calls in this instance? As I understand it he recommended that you buy both, but did he tell you why specifically stock?

[146]

A. All I remember him saying is, I just bought 5,000 shares for my own account, or I am going to, or I did, or whatever, and he says, why don't you buy 5,000. You know, that was a stock I'd had before.

* * * * *

[147]

Q. What was the next purchases of Pillsbury that you made?

A. The next day I had a conversation with Stewart and — a couple conversations. I had one conversation where he said, you know, your option is trading at 3/8ths and why don't we buy another hundred to average down

to a half, and I said, okay. And as I think I previously testified it takes about a week to get confirmations from Stewart, and I had another conversation with Stewart because I then had the confirmation of the first call I had bought, and I learned that the call expired in the middle of September, and I was under the impression it would expire at the end of September, and so I talked to Stewart and I said, God, I said, do you realized that these calls expired in the middle of September? And he said, yeah, that's why they are so cheap. And I said, yeah, I know, but — and he said — I said, oh, in addition I had read the *Wall Street Journal* article that Stewart was talking about and it said that Kelly wasn't going to resign until October 1st. And he said, say, you're right, you know. He said, we got to move these calls into October. And I said, there aren't any October. That's when we got — he said, what do you mean? I said, darn it, I mean I asked Janice about it and she didn't tell me about any Octobers. He says, yeah, there's Octobers.

And I said, well, I was unaware at the time that there were. And he said, well, in any event I think you ought [148] to — you ought to move these 500 calls into October, and he said, why don't you buy the — why don't we buy 500 October 35's, and I said, well, just a minute, how much money is that? And he said, probably $150,000. And I said, well — he said, well, you are up that much on, you know, on the year, and why don't, you know — he said, that's what I'm buying, or that's what I'm recommending or whatever. And I said, well, you'd better do a little analysis on the account and tell me how much I am up.

And so he called me back and said, year, you're up about 150. I said, well — he said, I think you ought to move and he said, don't worry about the Octobers. I think somebody else is — I mean about the Septembers.

Somebody else had told me this too. He said, you know, Pillsbury is a basket stock. On these program trading Pillsbury is one of the stocks they program trade, and he said, I think the market is going to move up here and I think the program trading will move Pillsbury up and we'll be able to get out of the — on a rally get out of the Septembers and let's buy — let's buy the October 35's while they are cheap. And I said, okay.

And I either talked to him that night or the next day and didn't buy any at 3, and I think it was the next day, which would have been Friday, I guess, he said, we can't buy any at 3. The price is 3 1/4, 3 1/2. He said, why don't we go to 3 1/2 to buy these things, you know. I said, you know, I just [149] think that's too much premium, Stewart, and he said, well, maybe you're right. Let's buy the 40's instead, and he said, you know, we could buy four times as many 40's, and he said we could buy the 40's at three quarters. And I said, well, okay, that seems like a — I said, I'm used to buying, you know, 40's. Go ahead.

Q. On the 25th —

A. The 25th is Friday now?

Q. No, the Friday I believe is the 26th. The 25th would be the Thursday. Did you purchase options on the 25th?

A. No. Oh, yeah, we purchased — we purchased 100 averaged out at 3/8ths.

[150] * * * * *

MR. BRAVERMAN: Let me just put the question to you. Prior to the time that you authorized or agreed with Stewart's recommendation of purchasing October 40's, did you have any conversation with anyone else about Pillsbury?

THE WITNESS: Yes, I did. I had a conversation — I probably had a conversation with Ms. Kinnahan, but I don't specifically recall, but I clearly had a conversation with Mr. Considine on, as I recall, the 24th.

MR. BRAVERMAN: Was that before or after the market close?

THE WITNESS: I think it was after the market closed.

BY MR. DETORE:

Q. And what did he say?

A. He said that he was going to buy some Pillsbury for his own account, and I said, did your customer who bought the 250,000 shares ever tell you why he bought the stock? And he said no. But he said, you know, it's now, whatever it was, four or five days, and Grand Met hasn't denied the rumor or statement, whatever it was, and they haven't clarified it, and so I'm buying some Pillsbury for my own account.

Q. Did he say how much?

A. No.

Q. Did he tell you anything else about the customer?

A. No. All I either know or I surmised was that it a, [151] you know, a London customer and, you know, just to kind of reiterate, he told me the rumor on the 17th about Grand Met and the London customer bought 250,000 shares at the market the next day, and Grand Met hadn't denied the statement or rumor, whatever it was, and I thought that was very significant information.

Q. Well, did you ask him whether the customer had been Grand Met?

A. Pardon me?

Q. Did you ask him whether his customer had been Grand Met?

A. Had been to Grand Met?

Q. Had been Grand Met.

A. Oh, no.

Q. Did you have the impression that it might have been?

A. It never occurred to me it was Grand Met. I thought it was an English bank, or you know, or English institution.

[153] * * * * *

Q. You testified that the Kelly rumor influenced Mr. Evans' recommendations. Did it influence your purchases?

A. Absolutely.

Q. And was that true through the remainder of the time that you were purchasing Pillsbury?

A. Yes, it did.

Q. How about the Dorfman — I'll call it a rumor even though you've stated that it read like more than a rumor — did that rumor influence your decision to purchase?

A. Absolutely.

Q. And did it continue to through the end of your purchases?

A. Well, the rumor and what Considine had told me. What Considine had told me was what primarily influenced me.

[154]

Q. — the Dorfman rumor continued to through the end of your purchases?

A. Well, the Dorfman rumor was initially of some concern because, you know, I was told, you know, if they deny it, you know, that ballgame is over and, you know, that they thought, you know — you know, I was told if that had been a United States company, they would have had to have said something.

Q. So beginning after you first heard that rumor —

A. But I mean by the time Considine told me, they hadn't denied it and, you know — so I thought, yeah, absolutely. In fact, you know, to be quite candid with you, it was sort of a public rumor in Minneapolis. I mean everybody was talking about some company in England was going to buy, you know, Pillsbury.

Q. When was that?

A. During that next week, you know, after the Dorfman.

Q. What gave you the impression that it was a public rumor in Minneapolis?

A. Oh, I don't know. All the brokers I talk to were talking about it. In fact, I heard a couple people in the [155] elevator one day talking about, "Say, did you hear that some outfit in England is thinking about taking on Pillsbury". We are in the Pillsbury Center, of course.

[156] * * * * *

MR. BRAVERMAN: Is it fair to say that it was the confluence of all of these rumors occurring at the same time that led you to the impression that Pillsbury was very much in play?

THE WITNESS: Yes, and I kept hearing this, you know, where there is smoke there's fire and, you know, Grand Met had flushed out Kelly and, you know, it appeared that way. I mean, you know, Grand Met's announcement on the 18th and, you know, five days later Kelly announces.

[157] * * * * *

Q. Following the conversation you've testified to concerning — with Mr. Considine concerning his own personal — what was the next time you had any discussion with anyone where you learned anything new about Pillsbury?

A. I talked to Considine as I remember on the 24th. I think we've gone over what happened on the 25th.

Q. Um-hum.

MR. BRAVERMAN: Those were the two conversations with Evans?

THE WITNESS: Yes. At least two. Maybe three. I know he figured the account, or at least he told me he did. Yeah, then the next time would have been on Friday, I guess.

BY MR. DETORE:

Q. And what happened then?

A. Stewart told me — well, I guess maybe we've been over this — that he hadn't bought any, you know, at 3 and he wanted to go to 3 1/2.

[158]

Q. This was the conversation which you revisited with him which series of options was appropriate to purchase?

A. Yes. I told him I though 3 1/2 was too much premium and he said, you're right, let's buy the 40's, and he said, you know, we can buy four times as much, and there was a little misunderstanding on that later on, but I said, go ahead and buy some 40's.

Q. Now if I understand Mr. Evans' original recommendation, he wanted you to buy 500 calls, is that correct, in the October 35?

A. October 35's at $3.

Q. And on — when was the next time you actually made a purchase?

A. On that Friday he was going to go ahead and buy 40's at three-quarters. He didn't buy any.

Q. How many had he planned to buy on that Friday?

A. I had understood he was going to buy 500, but as I said, there was a little misunderstanding on that which we clarified at a later date.

MR. MATHEWS: Why don't you explain the misunderstanding.

THE WITNESS: I thought he was going to buy 500. He had said to me, you know, we could buy four times as many. He thought he was then authorized to buy four times as many.

[159]

Q. So he had an understanding that you were authorizing him to buy 2,000?

A. Yes.

GOVERNMENT EXHIBIT 78

Date	Buy or Sell	Number of Shares or Option contracts	Price	Total	Profit	Percentage on Return	Annualized Percentage on Return
8/29/85	Buy	100 Oct. 40	75.000	7,500.000			
10/4/85	Sell	100 Oct. 40	1,812.500	181,250.000	173,750.000	2,317%	23,167%
8/30/85	Buy	50 Nov. 45	43.750	2,187.500			
10/4/85	Sell	50 Nov. 45	1,300.000	65,000.000	62,812.500	2,871%	29,533%
8/30/85	Buy	100 Oct. 40	75.000	7,500.000			
10/4/85	Sell	100 Oct. 40	1,812.500	181,250.000	173,750.000	2,317%	23,829%
8/31/85	Buy	100 Oct. 40	75.000	7,500.000			
10/4/85	Sell	100 Oct. 40	1,812.500	181,250.000	173,750.000	2,317%	24,529%
9/1/85	Buy	100 Oct. 40	62.500	6,250.000			
10/4/85	Sell	100 Oct. 40	1,812.500	181,250.000	175,000.000	2,800%	30,545%
9/1/85	Buy	200 Oct. 40	68.750	13,750.000			
10/4/85	Sell	200 Oct. 40	1,812.500	362,500.000	348,750.000	2,536%	27,669%
9/2/85	Buy	200 Oct. 40	75.000	15,000.000			
10/4/85	Sell	115 Oct. 40	1,812.500	208,437.500	199,812.500	2,317%	25,062%
10/5/85	Sell	85 Oct. 40	1,812.500	154,062.500	147,687.500	2,317%	25,272%
9/2/85	Buy	22 Oct. 40	62.500	1,375.000			
10/5/85	Sell	22 Oct. 40	1,812.500	39,875.000	38,500.000	2,800%	30,345%
9/6/85	Buy	200 Oct. 40	75.000	15,000.000			
10/5/85	Sell	200 Oct. 40	1,812.500	362,500.000	347,500.000	2,317%	28,759%
9/7/85	Buy	100 Oct. 40	81.250	8,125.000			
10/5/85	Sell	100 Oct. 40	1,812.500	181,250.000	173,125.000	2,131%	27,396%
9/9/85	Buy	170 Oct. 40	75.000	13,350.000			
10/5/85	Sell	170 Oct. 40	1,812.500	322,625.000	309,275.000	2,317%	30,809%
9/9/85	Buy	300 Oct. 40	93.750	28,125.000			
10/5/85	Sell	200 Oct. 40	1,812.500	362,500.000	343,750.000	1,833%	24,444%
10/17/85	Sell	100 Oct. 40	1,812.500	181,250.000	171,875.000	1,833%	14,925%
9/9/85	Buy	50 Nov. 45	56.250	2,812.500			
10/4/85	Sell	41 Nov. 45	1,312.500	53,812.500	51,506.250	2,233%	30,925%
10/4/85	Sell	9 Nov. 45	1,300.000	11,700.000	11,193.750	2,211%	30,619%
9/9/85	Buy	200 Oct. 40	87.500	17,500.000			
9/17/85	Sell	200 Oct. 40	1,812.500	362,500.000	345,000.000	1,971%	18,677%
9/9/85	Buy	2 Oct. 40	81.250	162.500			
9/12/85	Buy	198 Oct. 40	81.250	16,087.500			
9/17/85	Sell	100 Oct. 40	1,812.500	181,250.000	173,125.000	2,131%	21,852%
9/17/85	Sell	100 Oct. 40	1,837.500	183,750.000	175,625.000	2,162%	22,253%
9/10/85	Buy	97 Nov. 40	212.500	20,612.500			
9/10/85	Buy	3 Nov. 40	200.000	600.000			
10/4/85	Sell	100 Nov. 40	1,825.000	182,500.000	161,287.500	768%	10,240%
9/20/85	Buy	75 Nov. 40	200.000	15,000.000			
9/21/85	Buy	125 Nov. 40	225.000	28,125.000			
10/4/85	Sell	114 Nov. 40	1,825.000	208,050.000	164,275.000	775%	20,433%
10/5/85	Sell	86 Nov. 40	1,837.500	158,025.000	136,675.000	717%	18,429%
9/20/85	Buy	5,000 Shares	38.750	193,750.000			
10/4/85	Sell	5,000 Shares	58.375	291,875.000	98,125.000	51%	1,302%
9/20/85	Buy	100 Oct. 45	43.750	4,375.000			
10/4/85	Sell	100 Oct. 45	1,312.500	131,250.000	126,875.000	2,900%	34,579%
Total Profit					4,305,625.000		

DEFENDANT'S EXHIBIT 9

MERGERS & ACQUISITIONS WEEK

(Continued from page 13)

Michael Hoffman, managing director—co-head of M&A at Smith Barney, confirmed that Weitzel had resigned last week. However, he dismissed reports that he and co-head Bill Wagner were deeply upset at Weitzel's decision. "I think the correct response is to say that he had a good opportunity, he took it, and we wish him well," Hoffman said.

Sources said that when Weitzel resigned late Tuesday, he had been asked to clean out his office over the weekend rather than during office hours because his Smith Barney superiors didn't want co-workers to immediately learn of his resignation. But by late Thursday, his departure was being formally acknowledged at the firm.

Weitzel speaks Japanese and had worked in the corporate finance group at Dillon Read & Co. before joining Smith Barney. He is expected to make several hires in the next few months as Chemical continues to build its corporate finance group, a Chemical official said.

Beth Anton

investments

Grand Met's Speedy Auction Of Hotel Unit Raises Eyebrows

Grand Metropolitan PLC's request that all interested parties submit bids for its Intercontinental Hotels subsidiary within two weeks indicates that the U.K. company is in a rush to raise cash, several investment bankers said. The tight deadline that Morgan Stanley & Co. Grand Metropolitan's investment banker, has established for auctioning the hotel chain also signals the company's eagerness to follow through with its plans to buy a branded food processor for $5 billion to $6 billion.

Indeed, some investment bankers believed that the auction was just a formality and that Grand Metropolitan was already near an agreement to sell Intercontinental. One source said Morgan Stanley already had narrowed the potential buyers down to four candidates: The Robert M. Bass Group, Trusthouse Forte PLC, Nestle SA and SAS, the Scandinavian airline.

Determining Intercontinental's fair value, which some estimate at about $2.5 billion, is proving very difficult for some bidders, given the short time frame that they have to evaluate bids. "There are about 100 different hotels in 75 countries," said one investment banker. "It usually takes a few months to put together a bid on this kind of company because you have to figure out what the different properties are worth."

Grand Metropolitan's desire to raise cash quickly has fueled speculation that it will launch a bid for a major U.S. food company within the next month. Some analysts in the U.K. believe that the company has targeted Pillsbury, since the Minneapolis-based food processor and fast-food operator meets many of the criteria that Grand Metropolitan has stated it is seeking in an acquisition target.

Their hotel assets were not registering a very high rate of return; it was less than 4% on assets employed, one analyst in the U.K. said. "The branded food area is one where returns are larger and they know they would have had to invest capital in the hotel business to increase its profitability."

This analyst also noted that Grand Metropolitan has indicated it would be quite aggressive in selling off the assets of its target to pay down acquisition debt. The sale of Intercontinental could bring in $2.5 billion on top of the $700 million the company received when it sold its soft drinks business earlier this year.

One divestiture candidate at Pillsbury is its Burger King subsidiary, which has seen its profit margins come under increasing pressure in recent years. Despite its problems, investment bankers said the fast-food chain could generate tremendous interest if it was put up for sale.

Evan [illegible]

STRATEGIC FOCUS

Micom Systems Wants—Gets An Additional $10 Million

Micom Systems found a solid cash buyout bid from Odyssey Partners more attractive than a previous bid that was contingent on the divestiture of two divisions. Like earlier bidders, however, Odyssey will probably sell Micom's local area network business after the deal closes in order to finance the transaction.

Odyssey made its $16 per share tender offer for Micom two weeks ago. The $201.3 million proposal was $10 million higher than a joint offer made in July by Welsh, Carson, Anderson & Stowe IV and E.M. Warburg, Pincus & Co. [illegible]

The Welsh Carson/Warburg Pincus offer was made July 12 for 315.62 a Micom share. But their offer hinged on the sale of two Micom divisions, Micom-Interlan and Micom Digital Corp.

If these divisions had not been sold prior to the buyout, Micom shareholders would only have received $12 per share, plus the per-share equivalent of the proceeds when the units were sold. Micom allowed the buyout proposal to expire without acting on it and the offer was dropped.

Goldman, Sachs & Co. and Hyde & Covington are co-financial advisers to Micom, a supplier of networking communications equipment. Drexel Burnham Lambert acted as the financial adviser to Odyssey.

California-based Micom has already agreed to sell Micom Digital Corp., the wholly owned subsidiary of Micom, will be sold to Telemetrics International, a Florida-based communications company, for $9.6 million, a company official said.

Odyssey plans to sell another Micom business, Micom-Interlan, at some point after the buyout, a Micom official noted. Odyssey officials could not be reached for comment.

Odyssey will finance the acquisition through a bank facility with manufacturers Hanover Trust and debt and preferred stock offers placed through Drexel. Manufacturers Hanover will provide a $220 million senior bank facility for the tender offer.

This facility will be sub- [illegible]

removed after the merger through a $175 million line of senior debt financing, a spokesman of [illegible] said. The loan, an 18-month $50 million term loan and a revolving credit facility for up to $[illegible] million.

Drexel will provide up to $125 million through the sale of zero coupon [illegible] senior subordinated increasing rate notes, 250,000 shares of $25 million of senior increasing rate preferred stock, and $[illegible] million through junior preferred stock.

It is believed that these issues will be refinanced through the public or private placement of new debt and equity. Micom's management will also be participating in the buyout, a company official said.

[illegible]

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FOURTH DIVISION

Criminal No. 4-92-219

UNITED STATES OF AMERICA, *PLAINTIFF,*

v.

JAMES HERMAN O'HAGAN, *DEFENDANT.*

Volume II-a
January 19, 1994

TRANSCRIPT OF PROCEEDINGS

HAD BEFORE THE HONORABLE
JAMES M. ROSENBAUM, and a Jury
Minneapolis, Minnesota

APPEARANCES:

For the Government	Christopher Bebel Jon Hopeman
For the Defendant	Charles Hawkins
Reported By:	Dawn M. Sampson, RPR-CM

* * * * *

[23] [GOVERNMENT OPENING STATEMENT]

Mr. Bebel:

Now, let's get back to the defendant's trading. How does the defendant get started in his purchases of Pillsbury? On July 27, 1988, the defendant buys 5,000 shares in Pillsbury. And on August 3rd, he sells. He locks in a small profit, about a $2 profit. He buys at 36, sells at about 38. Locks in a small profit, and he moves on. Holds for a short period of time, makes a little bit of money, and sells. Now, later on, he begins buying when he has inside information. That's a situation, end of July, beginning of August, where he's buying when there's no evidence that suggests he does have inside information. But later on he acquires inside information as to Pillsbury. And he starts then adhering to a different strategy. And [24] what's that different strategy? Well, at the end of August, he doesn't buy and sell, he just buys and buys and buys and buys. He starts buying on August 18th. And why is he accumulating? Because he has inside information. He has a secret. And because of that secret, he knows Pillsbury's going to be bought out.

[27] * * * * *

Now, the evidence shows that the defendant came and talked to Tinkham before this August 26 meeting while Tinkham's thinking about what he's going to be saying at this August 26th meeting, but there isn't going to be any evidence that shows the date at which he first came to know about the tender offer. The defendant comes in and shows that he knows prior to August 26, but there's going to be no evidence showing the first time at which he acquired the information. And so because he has to have the inside information in order for his trading to be illegal, no trades prior to

August 26 are charged in the indictment, although there were trades in Pillsbury prior to August 26. [28] There were trades on August — August 18th, August 21st, 22nd, et cetera. Those trades are not charged. Trades falling after August 26 are charged. Those trades begin August 26 and end September 21st.

* * * * *

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FOURTH DIVISION

Criminal No. 4–92–219

UNITED STATES OF AMERICA, *PLAINTIFF,*

v.

JAMES HERMAN O'HAGAN, *DEFENDANT.*

Volume III
January 20, 1994

TRANSCRIPT OF PROCEEDINGS

HAD BEFORE THE HONORABLE
JAMES M. ROSENBAUM, and a Jury
Minneapolis, Minnesota

APPEARANCES:

For the Government	Christopher Bebel Jon Hopeman
For the Defendant	Charles Hawkins
Reported By:	Dawn M. Sampson, RPR-CM

* * * * *

[TESTIMONY OF J. JACKSON]

[Mr. Bebel:]

[94]

Q. And while you were working on these cases with the defendant, did you have any conversations relating to the law of securities fraud?

A. Quite often.

Q. And you had an opportunity to become familiar with the defendant's knowledge of that area of law?

[95]

A. Yes.

Q. And what did you observe in that respect?

A. I had learned the securities law in large part through my working with Jim, and I came to believe that he was probably the most knowledgeable person at the law firm in the area of securities fraud law, and was very knowledgeable.

Q. And did you also learn whether he was knowledgeable with respect to how markets worked, securities markets?

A. Yes.

Q. What did you learn in that regard?

A. That he was very knowledgeable.

Q. Did you ever have any conversations with him about how securities markets worked?

A. Yes.

Q. And how often did you have these conversations during the years you worked with him?

A. Oh, I don't know. I mean, they would tend to be case specific. So I can't really put an estimate. It was probably a handful at least.

Q. Well, did the defendant ever help familiarize you with efficient market principles?

A. I think it's better to put it this way: That we discussed on at least one if not more than one occasion what you refer to as efficient market principles.

[99] * * * * *

Q. Let's shift gears a little bit. At some point in 1988, were you aware of a tender offer being made for Pillsbury common stock?

A. Only after the fact.

Q. You were aware after the public announcement was made?

A. I read it in the newspaper.

Q. Well —

A. After the public announcement was made.

Q. Did you know that this announcement was going to be made prior to the time it was going to be made?

A. No.

Q. Did you have any in whatsoever?

[100]

A. Not I.

Q. And you were working at the Dorsey & Whitney law firm?

A. Yes.

Q. Did you have any knowledge as of the time the

tender offer announcement was made as to whether Dorsey & Whitney was representing the bidder who made the offer?

A. I was not aware of that.

Q. At that time?

A. At that time.

Q. And does October 4th, 1988, sound like the right date as to when this tender offer was made?

A. I would have to rely on you on that.

Q. Somewhere in the later half of 1988 though?

THE COURT: We'll assume it was October 4.

MR. BEBEL: Okay.

BY MR. BEBEL:

Q. And during this period, 1988, were you making in 1987 also, were you making any attempt to stay abreast of developments in the business sector, in local companies?

A. Oh, I think in general, yes.

Q. Well, what types of things were you doing to keep yourself aware?

A. I tried to just as a part of my practice since I work in [101] this community, keep abreast of general business information, particularly about local corporations, or about corporations that our firm either did represent or might in the future represent.

[102] * * * * *

Q. Now, Mr. Jackson, when we left off, I believe you had [103] testified that you had not been aware of the

tender offer for Pillsbury securities until that tender offer was announced?

A. That's correct.

Q. And you said that — there were times you were reading business publications to stay abreast of these developments?

A. General developments in the business community, right.

Q. Okay. I'm showing you what's been marked as Exhibit 60, and Exhibit 63. Both of these are Wall Street Journal articles, one comes from the Wall Street Journal dated December 22nd, 1987. The other is a Wall Street Journal article dated March 21st, 1988.

THE COURT: Just a second. That's Exhibit 6?

MR. BEBEL: 60. 60 and 63.

THE COURT: Okay. Thank you. I'm sorry, I just — I didn't have that.

BY MR. BEBEL:

Q. And 63 says Pillsbury's still vulnerable to takeover, analysts say. That's the Wall Street Journal article that comes from March of '88.

The other Wall Street Journal article says in there, Pillsbury has been mentioned among the domestic candidates for possible acquisition by an overseas giant such as Nestle. That's the Wall Street Journal article dated December 22nd, 1987.

[104]

Now, given publication of articles of that sort, how is it that you didn't know Pillsbury was going to be taken over?

MR. HAWKINS: Object. Calls for speculation.

THE COURT: You may answer.

THE WITNESS: My answer is is that there are articles published from time to time and particularly during this period of time, with great frequency, where people are speculating on takeover candidates.

BY MR. BEBEL:

Q. Was that true with respect to the food industry also?

A. Well, in my opinion, yes, I had specific familiarity with General Mills and they were touted in similar articles for being a takeover candidate as well.

Q. So you had some special interest in General Mills?

A. I did. They were one of my clients.

Q. And there were takeover articles about General Mills also?

A. I don't know to what frequency in comparison to Pillsbury, but there certainly were, yes.

Q. So then those articles didn't provide you knowledge of what was going to happen with respect to a tender offer?

A. Not to me, no.

[109] * * * * *

[MR. HAWKINS:]

Q. Now, Mr. Bebel asked you whether or not you were aware in your law firm while you were there of the potential for a tender offer being made against Pillsbury.

Do you recall [110] that?

A. I do.

Q. And you didn't learn about that till after the offer had been made, correct?

A. That's correct.

Q. Notwithstanding, you did not learn about the tender offer, there was an awful lot of talk in the office about Pillsbury, correct?

A. Not that I was aware of.

Q. Okay. There wasn't any conversation around town about the fact that Pillsbury was a target of a takeover by somebody someplace somewhere sometime?

A. Well, you're going to have to help me with what you mean by around town.

Q. Wasn't there a lot of speculation starting as early as late July in 1988 among the business community about what might happen to Pillsbury? If you know.

A. If you speak broadly, I think there's speculation about a lot of companies, given their financial circumstances. It's a publicly traded company, and therefore the public has access to a vast amount of information.

[TESTIMONY OF MICHAEL KENNEDY]

[122]

A. The first time that the acquisition happened, it required or made all of the analysts look at all of the companies in the food industry now, because it's sort of like when your house is sold in your neighborhood, it suddenly creates a value, a new value for the going price. And so once we saw the first acquisition, we looked at all of the companies within the food industry trying to find out what, given the newest price of the last transaction, what would all of these companies be worth.

And so once in the early '80s when that started, there was a list of companies, of food companies, that were potential takeover candidates, and Pillsbury was one of those.

Q. And you viewed Pillsbury as an attractive takeover target then beginning in the early '80s?

A. Yes.

Q. And you continued to view it as an attractive takeover candidate through what time period?

A. Well, it got taken over, so I guess '88: Off and on.

Q. Okay. Well, was there any period of time, say, from '82 to '88 where it was appearing less attractive as a takeover [123] candidate?

A. Yes, it was. Umm, the — the way I would go about it would be that I would identify what I thought the lowest price a stock company could get. And then what was its takeover value. So that gave me a range.

And at various times during this period the food stocks would move between these ranges, so I would be

buying the stock when it was low, but if it got up close to where I thought it was worth it to be taken over, then we would usually sell the stock. And that happened two or three times in Pillsbury.

* * * * *

Pillsbury had been saying for at least a year prior to [124] their taking over that they did not want to be taken over because the rumor kept running around about it. And so any takeover at Pillsbury was going to be unfriendly.

Q. Unfriendly?

A. Unfriendly. They didn't want — they wanted to stay independent. And a company can do certain things to try to keep someone from buying them. And Pillsbury, I think, umm, tried to do that.

Q. Tell us about that.

A. Well, there were two things they had going — well, going for them but against being taken over. One of them had to do with Burger King. Burger King, they owned Burger King, and Burger King had been a very poor performer. They were having a lot of trouble with their franchisees, they actually had rebellions with their franchisees, and that caused a lot of dissension. And if you're going to buy a company, you'd like to buy something that either you can fix or that isn't broken. And the potential of trying to take over Pills — Burger King and fix it, would be a very difficult task, particularly if you didn't have any restaurant background. So that was number one. The Burger King problem.

The second one is that they can make themselves what I call ugly. They went out and bought a tuna company in the summer of 1988. The tuna company was not

a good company. [125] It had been losing money. The industry itself, the tuna industry was not a good business, and so they were actually kind of making, in my mind they were trying to make themselves look even uglier so whoever had to buy them would have to pay for this tuna business, but they also have to try to sell it afterwards, and it was a big 4 — it was a $400 million company, so it was a big company.

Q. And so when Pillsbury then bought this tuna company in the summer of 1988, they were then making themselves less attractive takeover candidates?

A. In my opinion. And I put a sell out on our stock or our firm during that time.

[126] * * * * *

BY MR. BEBEL:

Q. Change that to Defendant's Exhibit Number 6. Do you recall being interviewed by a reporter with respect to Pillsbury takeover rumors in the beginning of October?

A. Ah, not really. During the last year of their existence, ah, I was interviewed quite a bit by the media because of, number one, even the national media, because I was located here, there was always questions about Pillsbury, so I don't, you know, I get interviewed a lot.

[128] * * * * *

And there's one other little piece to that is that, umm, if you have — Pillsbury also owned Steak and Ale and Bennigans. And they served liquor. Now, they were doing very poorly also. But it is also another item to keep them ugly. If you have any distribution, or you sell or make any alcoholic beverage, you cannot own a

restaurant that serves it, the alcoholic beverage. So that was another item that they had that companies could not be interested in Pillsbury if they were in the alcoholic beverage business themselves.

Q. Okay. Now I'm showing you a number of articles. One of them is Exhibit 66, which has been stipulated into evidence, Your Honor. It says that "Diet Doctor for the Dough Boy," references Pillsbury as being a possible takeover target.

Another article from Business Week, dated January 11th, 1988, says that Philip Morris is looking at Pillsbury.

By the way, this article that's titled a "Diet Doctor For The Dough Boy" is Business Week, and from August of 1988.

Another Business Week article from March of 1988, "Are Raiders Getting Hungry for Pillsbury?" And there's a couple [129] more of these articles.

Were you aware of articles of this sort during 1988 and prior to the takeover of Pillsbury?

A. Yes.

Q. And how is it that you were not aware of this tender offer prior to its announcement given the publication of those articles?

A. Well, there's a big difference. Umm, the analyst's job is to know the companies and know the industries, and to determine whether or not certain transactions like a takeover could, could happen, or who could be the target, who could be the one buying it. The newspapers are always having articles of rumors.

That's a big difference, a rumor's a big difference from

having the knowledge that the stock was going to be bought. The company was going to be bought. There's — that's — they're two different things.

* * * * *

[MR. HAWKINS:]

[139]

Q. Now, in that regard, you talked about the fact that with Pillsbury, they were involved in both the alcohol and [140] beverage industry, correct?

A. Alcohol and restaurant business, yes.

Q. And that if you're involved, for instance, in wholesale liquors, you might have a hard time taking over that business and keeping the restaurants and your alcohol business, correct?

A. You couldn't.

Q. Yet the analysts identified Grand Met as a potential takeover for that very reason about being able to break it up and get rid of the food and beverage, correct?

A. Ah, I — I can't agree with that because I don't — I didn't ever have Grand Met on my potential takeover of Pillsbury for just the reason of the alcohol. I don't know if someone else might have decided, ah, but they were not on my list of potential — it's usually a Nestle looking at or for —

* * * * *

BY MR. HAWKINS:

Q. We'll go to Government's Exhibit 68, all right, What is this, sir?

[141]

A. It's an article out of, umm, Investment Dealers Digest.

Q. What's the date on that?

A. August 22nd, 1988.

Q. When was the takeover of Pillsbury?

A. In October of '88.

Q. October 3rd or 4th?

A. Yeah, first week.

Q. So approximately six weeks or five weeks prior to the actual tender offer, roughly?

A. Three weeks.

Q. You've got the whole month of September. And part of August?

A. Right.

Q. Approximately five weeks?

A. Okay.

Q. Directing your attention to the, I guess right — to the yellow highlighted part at the end of the first paragraph in the article entitled "Grand Met Speedy Auction of Hotel Units Raises Eyebrows," would you read that highlighted portion to the jury, please, starting with Grand Metropolitan?

A. Grand Metropolitan investment banker, Metropolitan's investment banker has established for auctioning — I need my glasses, for auction the hotel chain. Also signals the company's eagerness to follow through with its plans to buy a [142] branded food processor for 6 billion to 8 billion.

Q. Five to six?

A. Five to six billion dollars.

Q. Okay. Now, Pillsbury eventually sold for five to six billion dollars, didn't it, 5.3 billion?

A. Yeah.

Q. Is that fair?

A. It's fair.

Q. Is Pillsbury a branded food processor?

A. Yes.

Q. Now, will you read the highlighted portion in the second column, unless you want me to, I mean, it's up to you, sir?

A. Okay.

Q. And maybe, Grand Metropolitan's desire to raise cash quickly has fueled speculation that it will launch a bid for a major U.S. food company within the next month. Some analysts in the United Kingdom, UK, believe that the company has targeted Pillsbury, since the Minneapolis based food processor and fast food operator meets many of the criteria that Grand Met has stated in seeking — it is seeking in an acquisition target?

A. That's what it says.

[147] * * * * *

Q. And in that regard, Government's Exhibit 65a is an article dated August 2nd, 1988, correct?

A. Correct.

Q. And it talks about Donald Trump buying Pillsbury in August of 1988, correct?

A. Buying stock in Pillsbury, yes.

Q. A lot of stock.

A. He's big and he's got a lot of money.

Q. He bought 2.5 million shares in seven days, correct?

A. That's what the article says, yes.

[151] * * * * *

Q. Well, August 2nd is the article that we just talked about with Donald Trump, fair? Is that right?

A. That's — I'll, the article is August 2nd.

Q. Right. That happens August 2nd?

A. Right.

Q. Now, during August we've already talked on August 22nd about Grand Met being identified as a potential takeover?

A. In that publication, yes.

Q. I'm showing you Defendant's Exhibit 10, which is an August 24th Wall Street Journal article. Correct?

A. Correct.

Q. Now, this identifies an individual by the name of Donald Kelly, correct?

A. Correct.

Q. And it identified — who was Donald Kelly?

A. Donald Kelly, umm, had at one point been the chairman of S–Mark, a Chicago based company. He was kind of known as a raider, an asset player.

Q. Involved with any major food companies?

A. Ah, yes, he got into a real dog fight with Beatrice. They tried to take each other over, and he was known for making hostile raids.

Q. Now, at least according to the August 24th, 1988 Wall Street Journal, Donald P. Kelly, in a move that may lead to his buying part of Beatrice Company resigned as chairman of [152] the company, along with two executives who could help manage his next acquisition vehicle, correct?

A. Okay.

Q. Is that what that says?

A. I could sure read it.

Q. I can —

A. Yes.

Q. He split from Kelly with two hot shot managers, correct?

A. Correct.

Q. And the article identifies or states that Mr. Kelly might pursue an acquisition other than a Beatrice unit and identifies, as previously reported one potential target is rumored to be Pillsbury Company, which recently underwent management changes, et cetera, et cetera, correct?

A. Correct.

Q. So at least as of August 22nd, we've got Grand Met identified as a potential, ah, raider of Pillsbury by Investment Dealers Digest, correct?

A. Correct.

Q. Is it fair to say that Investment Dealers Digest is

an industry magazine or a digest that's read?

A. That's the first time I've ever seen it.

Q. Okay. August 22nd ident — or strike that — 24th, we've identified Donald Kelly as a potential Raider of Pillsbury, correct?

[153]

A. Correct.

Q. And on the 2nd we've got Donald Trump, correct?

A. Correct.

Q. And the fact of the matter is, there are numerous others that may or may not be, including Kraft?

A. Correct.

Q. Now, Government's Exhibit —

MR. HAWKINS: I guess we talked about it as being Defendant's Exhibit 6; is that correct, Chris?

BY MR. HAWKINS:

Q. Defendant's Exhibit 6 is the newspaper article that Mr. Bebel referred to that you were quoted in?

A. Right.

Q. And that's from October 3rd, 1988, the date —

A. Correct.

Q. — before the announcement of the tender offer, correct?

A. Correct.

Q. And he talked to you about your position on takeover and whether Pillsbury had positioned themself, correct?

A. Correct.

Q. The very last paragraph talks about a Linda Singer. Do you know who Linda is?

A. No.

Q. They quote, said Linda Singer, a manager of options trading at Piper Jaffray. I'm even getting calls from [154] people at Pillsbury. Everybody thinks the company's being taken over.

That's the quote they attribute to her on October 3rd, the day before the tender offer. If you can read that.

A. It's what it says.

Q. Okay.

[156] * * * * *

Q. Okay. Now, you're familiar with an individual by the name of Dan Dorfman, correct?

A. I read him, yes.

Q. He's the Money Line columnist?

A. For U.S.A. Today.

Q. And he also has a cable news network or appears on strictly business on the cable CNN?

A. I never saw that.

Q. You don't watch that?

A. No.

Q. But you read his column?

A. Yes.

[157]

Q. Now, are you aware, and I'm showing you

Government's Exhibit 57. This is a transcript of Money Line from August 18th, 1988?

MR. BEBEL: Your Honor, I object. Are we to understand that this exhibit is in evidence?

MR. HAWKINS: I thought so.

THE COURT: Normally I make these decisions, but you guys have sort of worked this out. Do you want to get your heads together for a minute?

MR. HAWKINS: I thought this was your Exhibit 57.

(Discussion off the record.)

MR. BEBEL: We stipulated to the admissibility of this document, Your Honor.

THE COURT: In that case there's nothing for me to do again.

BY MR. HAWKINS:

Q. This is a transcript of Money Line from August 18, 1988, which is from CNN, Cable News Network, New York, New York, correct?

A. That's what it says.

Q. And Dan Dorfman, the bottom of the second to the last page of the transcript, and top of the last page says: Let's go on to Pillsbury up one-half. The story there is some people close to Grand Metropolitan apparently are telling people in the street that Grand Metropolitan is interested in acquiring Pillsbury. Pillsbury was up one-[158] half today, correct?

A. That's what it says.

Q. Okay. Now, people close to Grand Metropolitan generally relates to insiders, correct?

A. I would say so, yes.

Q. And in that regard, when you take information like that that you attribute to an insider, basically you attribute that as being a potential announcement, correct? I mean, that's —

A. I wouldn't say so, no, I wouldn't.

Q. I didn't say you would, sir. I said it can be viewed — maybe I did say you. It can be viewed as a potential announcement by people that are inside the company, correct?

A. I have no idea. That's not my opinion.

Q. But it is your opinion that people close to Grand Met would relate to insiders?

A. It could, sure.

[167] * * * * *

REDIRECT EXAMINATION

BY MR. BEBEL:

Q. Now, when companies that truly want to go forward — strike that. When you have a company that really, truly wants to go forward with a takeover bid, are those companies likely to leak out their intentions?

A. No.

Q. Why not?

A. Ah, it's illegal, number one. Number two, you would be [168] signalling, if there was another company out there that might be interested, your intentions and perhaps what you're willing to pay, and so it could actually up the price that you might have to pay or if you got into a bidding war. So you'd like to do it as quick and

fast as you can.

Q. So leaks can actually cost the bidder money?

A. Absolutely.

Q. Because it could cause the stock price of the target company to start moving up?

A. Correct.

Q. And then if the bidder wants to keep their premium in a constant level, it can cause them in the end run analysis to pay more money for that same company?

A. That's correct.

Q. And if it appeared that they might have to offer too high of a price, it could just kill the deal.

A. Theoretically, yeah.

[170] * * * * *

Q. And after you issued that sell recommendation, there were takeover rumors that were circulated. One of 'em is here in Exhibit 65a. It relates to Donald Trump's acquisition of Pillsbury stock, right?

[171]

A. That's right.

Q. And those rumors which came out after July 25th did not cause you to change your recommendation?

A. No, they didn't.

Q. Why not?

A. Well, at that point, the — I guess there's a couple things. I had my, the range that I felt the company could go for, and I think I moved it up because there had been some transactions, so we're talkin' mid forties. The

stock wasn't that attractive in the takeover from there. And again, you know, people like Donald Trump, they're players and manipulators, but I don't consider them a serious people.

Q. And so you didn't take that Trump article seriously?

A. Ah, I didn't take it seriously, no.

Q. And to what extent were these takeover rumors which came out after July 25th a new phenomenon?

A. They were no different than what we'd been dealing with for the last year, year and a half.

Q. That during that time there had been a constant stream of articles about Pillsbury being taken over?

A. Pillsbury and many other food stocks. It's just what we were living with in that period of time.

* * * * *

[176] [TESTIMONY OF WILLIAM BROWNLIE]

[MR. BEBEL:]

Q. Okay. We're ready to start moving out of the background.

Take us back to 1988. Were Pillsbury options traded on the AMEX?

A. Yes, they were.

Q. To your knowledge was that the only exchange where Pillsbury options were traded?

A. Yes, sir.

Q. And focus on October 4th, 1988, what happened with respect to Pillsbury? Was a tender offer for Pillsbury stock announced that day?

A. Umm. Before the opening, before the opening of trading, ah, Grand Metropolitan announced a tender offer for all of Pillsbury stock at $60 a share.

Q. And what happened to the price of options for Pillsbury stock?

A. They shot up in proportion to the difference in prices.

Q. And then did you begin conducting an investigation into trading in Pillsbury options?

A. Yes, we did.

[177]

Q. And you focused on what time period?

A. Ah, from mid September, I think, starting with September 15th to October 3rd.

Q. And why is it that you were conducting this inves-

tigation?

A. Well, there was, ah, a large increase in activity prior to the announcement, and there was, ah, is quite a large jump in value of the options.

THE COURT: And what were — excuse me. What were the dates that you said you were inquiring into?

THE WITNESS: September 15th to October 3rd was the original time frame of our investigation.

THE COURT: Thank you.

BY MR. BEBEL:

Q. And then did you ever look at trading that fell outside of that time frame also?

A. Well — yeah — yes. That's — we, we have — we have certain information at our fingertips that will give us large positions. And from that we go back and see where those large directions came from. They might have been outside our time frame, then we also ask for information involved in those trades.

Q. So then if you saw that someone held a large position, you might also see that they were buying before September 15th?

A. Correct.

[178]

Q. And when you were looking at large positions, did you come across the name James O'Hagan?

A. Yes, we did.

Q. And what did you notice with respect to James O'Hagan's options position?

A. Well, we noticed, umm, that his position was the

largest position that was held by an account.

Q. So that meant what?

A. Well, he was the largest trader in Pillsbury options at that time.

Q. And what do you mean the largest trader? You mean he had bought the most Pillsbury options?

A. Yes, he had bought the most Pillsbury call options.

Q. More options than anybody else?

A. Anyone else in the world.

Q. And why do you say the world?

A. Because the options only trade on the Exchange, and we reviewed the activity, and his was the largest position.

Q. Do you recall approximately how large his position was?

A. 2,400 contracts.

Q. 2,400?

A. 2,400, yes.

Q. And that gave him the right to buy how many shares of Pillsbury stock?

[179]

A. Well, each contract is equivalent of a hundred shares, so it would be 240,000 shares.

Q. And you worked in the options surveillance department for approximately four and a half years?

A. Correct.

Q. How usual or unusual was it to come across an

individual buying 2,400 options?

A. Highly —

Q. Option contracts?

A. I would say highly unusual.

Q. How many times during your four and a half years did you see a situation where an individual had bought more option contracts than the defendant had bought?

MR. HAWKINS: Your Honor — excuse me, sir. I'd object as being irrelevant, Your Honor.

THE COURT: You may answer.

THE WITNESS: I'd say that was the largest position I'd ever seen by an individual.

[181] * * * * *

[Mr. Hawkins:]

Q. The government asked whether or not you looked into trading by Mr. O'Hagan. Do you remember in looking into trading by an individual by the name of James Long?

A. Yes, that name is familiar.

Q. Who was Jim Long's broker?

A. If I remember correctly, it was also — it was Steuart Evans.

Q. From Huntsville, Alabama?

A. I think so.

Q. What was the profit that James Long made in trading options?

A. I don't remember.

Q. Do you recognize what I've marked for identification purposes Defendant's Exhibit 17?

A. I believe so, yes.

Q. Okay. Do you recognize what I've marked for identification purposes as Defendant's Exhibit 5?

A. Yes.

Q. What's that?

A. That's my closing memo of investigation.

Q. Does that refresh your recollection as to what James Long secured in Pillsbury options as far as profit goes?

[182]

A. I'd have to say that if that's what I wrote that's what the number was.

Q. Do you recognize that as your report?

A. Yes, I do.

Q. What did you write?

A. Ahm, it says here $2,112,000 — $2,112,131.32.

Q. Now, did Steuart Evans, the broker himself, have any position?

A. Yeah, yes, he did.

Q. What did Steuart Evans the broker himself have in positions in Pillsbury options?

A. By memory, I couldn't tell you.

Q. Why don't you look at this and see if you can refresh your recollection. Here.

THE COURT: Gentlemen, you may be chatting, but

we can't hear you.

THE WITNESS: Sorry. It reads here 200 contracts.

BY MR. HAWKINS:

Q. Okay. And what was his profit in regard to the Pillsbury options?

A. $346,000 — $346,449.

Q. And his overall profit in regard to Pillsbury options and stock?

A. $456,096.

[184] * * * * *

Q. Tucker Fredrickson, according to your — Ivan Fredrickson — had individual positions we talked about in both options and stock, correct?

A. He had options, I don't remember if he had stock.

Q. Okay, I apologize. Options. Right?

A. Yes.

Q. But he also had another position as a result of his partnership in CF Partners, correct?

A. Yes.

Q. You also learned that CF Partners had purchased options through Goldman Sacks?

A. Goldman Sacks.

Q. New York based?

A. Yes.

Q. What kind of money did Tucker Fredrickson and CF Partners make through Goldman Sacks?

A. I don't remember.

Q. Do you have that in your report there?

A. It's probably in here somewhere.

Q. That help you?

A. Correct. Okay. Here we go. Let's see, they purchased, according to this, looks like 570 options.

Q. What was their profit?

[189]

A. Ah, it says here $1,038,027.

Q. Now, there was another client of Steuart Evans who traded in Pillsbury options by the name of Morris Frank?

A. Yes.

Q. And he's from Huntsville, Alabama, the hometown or the town that Steuart Evans is from?

A. Umm, it says so here.

Q. What monies did Stuart Frank —

THE COURT: Morris?

BY MR. HAWKINS:

Q. Morris Frank make in Pillsbury options?

A. $290,477.

Q. 290 or is it 2,900,000?

A. It says 290,000.

[193] * * * * *

Q. A review of Evans' order tickets revealed that the majority were marked solicited but a few were marked

unsolicited. Correct?

A. That's what it says.

Q. According to your investigation, Steuart Evans was advising people to buy options contracts in Pillsbury, correct?

A. I would say more of the SEC's investigation.

Q. I'm — okay.

A. Because a lot of this information we gathered we handed over to the SEC then they carried the ball, I guess you'd [194] say. We mostly what happens in a case like this is we do preliminary investigation, we gather preliminary investigation, turn it over to the SEC, and then they go further with it. They were the ones who did the, umm, depo — excuse me — deposition.

Q. Your participation here, your review of the order tickets disclosed to you that Steuart Evans had been advising customers to invest in Pillsbury options, correct?

A. If that's what it says in the memo, I don't —

Q. Did I read that wrong?

A. Yes — no.

Q. Okay.

MR. HAWKINS: May I have a moment, Your Honor?

THE COURT: Certainly.

(Discussion off the record.)

BY MR. HAWKINS:

Q. Do you recall what the total option positions that Steuart Evans' customers held?

A. Total of 'em combined? No, I don't know the figure.

Q. Showing you specifically what's been marked for identification as Defendant's Exhibit 18. Do you recognize that as part of your report?

A. Yes, I do.

Q. Does that show you what his total positions of — customers' total positions were?

[195]

A. Yes, it does.

Q. How many total options did his customers purchase?

A. 4,335 contracts.

Q. How does that relate to number of common shares of Pillsbury stock?

A. Ah, 433,500.

Q. And how much did the total amount of the profits of his customers come to?

A. Ah, it says here $7,480,000.

Q. And what's the grand total profit relate to?

A. Ah, the grand total of probably stock and options combined it says 8 million — $8,017,000.

Q. How many total customers does that relate to of Steuart Evans?

A. I think it was five.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FOURTH DIVISION

Criminal No. 4-92-219

UNITED STATES OF AMERICA, *PLAINTIFF,*

v.

JAMES HERMAN O'HAGAN, *DEFENDANT.*

Volume IV
January 24, 1994

TRANSCRIPT OF PROCEEDINGS

HAD BEFORE THE HONORABLE
JAMES M. ROSENBAUM, and a Jury
Minneapolis, Minnesota

APPEARANCES:

For the Government	Christopher Bebel Jon Hopeman
For the Defendant	Charles Hawkins
Reported By:	Dawn M. Sampson, RPR-CM

* * * * *

[TESTIMONY OF CHARLES ALAN PARKER]

[3]

[MR. BEBEL:]

Q. During 1988, was Cravath retained by a company named [4] Grand Metropolitan?

A. Yes, we were.

Q. And approximately when did that occur?

A. It occurred on July the 11th and July the 12th of 1988.

Q. And when did you become aware of this?

A. I first became aware that we were going to be engaged on the afternoon of July the 11th.

Q. And it was your understanding that the firm was to be engaged to do what?

A. When I first learned of the engagement, I was told by the presiding partner of our firm that we were going to represent Grand Metropolitan in connection with what would probably be a hostile acquisition of the Pillsbury Company.

Q. Effected through what means?

A. The expectation was that it would be, umm, effected through a hostile tender offer.

[6] * * * * *

Q. All right, let's move on. At the time that you got on board, had any financial advisors been retained?

A. Yes. A few weeks before we were retained, Grand Metropolitan had retained two financial advisors.

Q. Tell us what the names of these financial advisors

are, what role they played.

A. There were two. As I mentioned, the first was S. G. Warburg and [7] Company, Limited, (phonetic) in London, as well as its New York based affiliate, which is S. G. Warburg and Company, Incorporated. They were involved in all aspects of planning for the offer, but they were primarily focused on the United Kingdom aspects. Grand Metropolitan also retained Morgan Stanley and Company, Incorporated, a New York based investment bank, and its London affiliate, Morgan Stanley International. They again were involved in all aspects, but their primary focus was on the United States aspects of the tender offer and the related financing.

[8] * * * * *

Q. And you knew the expected target was Pillsbury, right?

A. Yes, we did.

Q. And you knew Pillsbury was located in Minneapolis, Minnesota?

A. Yes, we did.

Q. So did you go about retaining a Minneapolis law firm to help out on the deal?

A. Yes, we did.

Q. What firm was that?

A. We retained Dorsey & Whitney here in Minneapolis.

Q. And their role was to be what and how did that role further the deal?

A. Their, umm, their role really was expected to have three aspects. The first was that we needed advice from

local counsel in connection with compliance with the Minnesota Takeover Disclosure statute. We also needed a firm here in Minneapolis that would provide us with help in connection with Minnesota based litigation that we thought was likely to occur. And finally, and in some ways most important, we were hopeful that Dorsey & Whitney would be able to provide us with a substantial amount of help in the public relations arena. Because of their ability to schedule appointments with various public officials here in Minnesota.

[9]

Q. And Dorsey & Whitney was retained approximately how long after your firm got on board?

A. Their official retention was approximately a week after we were retained. I believe it was on the 19th of July.

Q. After the Dorsey & Whitney firm was contacted, did you become involved in any discussions with Dorsey & Whitney attorneys relating to this upcoming deal?

A. Yes. I did. My — one of the primary discussions was actually before they were retained. I was involved in two extensive telephone conversations in which I conveyed to them the background of the offer and what we expected to do, and then I spoke with them on, if not on a daily basis, several times a week after they were retained in connection with the offer.

Q. Now, you referred to two telephone conversations. What Dorsey & Whitney attorneys were involved in these telephone conversations?

A. The, ah, initial conversation I was involved in was, umm, one with Peter Dorsey, who, umm, was at least then a senior member of the Dorsey Whitney firm.

Later that day I had a conversation with Tom Tinkham, who was another member of the firm, Dorsey & Whitney.

Q. And Dorsey and Tinkham were both told about what your intentions were, i.e., the tender offer for Pillsbury?

A. Yes, they were.

[10]

MR. HAWKINS: Your Honor, with all due respect, I object to counsel's continuing leading questions.

THE COURT: Sustained.

BY MR. BEBEL:

Q. Well, what information was conveyed to Peter Dorsey during this telephone conversation?

A. We told him, umm, who the target was, Pillsbury. We also told him who our client was, Grand Metropolitan. In order to insure that they didn't have any conflicts of interest that would preclude them from representing Grand Met. We also told him the expectation that it would be a hostile offer. And, umm, what the expected timing was in terms of when the offer would be launched.

Q. Okay, how about Tinkham?

A. My conversation with Tinkham was more of a nuts and bolts conversation where I conveyed to him my belief that the offer would be vigorously resisted by Pillsbury and would involve an extremely contentious legal and public relations battle, and I also talked to him about the litigation that we expected to have happen during the offer.

Q. Now, the Grand Met parent company is named what?

A. Its official name is Grand Metropolitan Public Limited Company, or PLC.

Q. Based where?

A. They are based in London.

[11]

Q. And the board of directors sits where?

A. The board of directors regularly sits in London.

Q. Now, did you draft any resolutions for the board of directors.

A. Yes, I did.

[15] * * * * *

Q. Now, when you first began working on this upcoming tender offer, were you advised of what the expected launch date was?

A. Yes, I was.

Q. And by launch date I mean the date on which the offering would be made?

A. Yes, I was.

Q. And what was the launch date that was originally intended?

A. It was to be either immediately before or immediately after Labor Day, 1988.

Q. And was that moved back?

[16]

A. Yes, it was.

Q. To when?

A. Umm, it was moved back to, umm, the middle part of September. The precise date that it was set on was I believe September 21.

Q. Did it go forward on September 21?

A. No, it did not.

Q. So what happened?

A. Umm, on the weekend before September 21, there had been a great deal of work done in connection with making the final preparations to launch the offer, and there was a decision at that point by Grand Metropolitan that they wanted to delay the offer for a couple of weeks because they were in the very final stages of negotiating the sale of one of their divisions, Intercontinental Hotels, and they were concerned that —

MR. HAWKINS: Your Honor, I'd object to the witness testifying regarding hearsay. I'd object to the witness testifying about hearsay about what Grand Met was concerned about.

THE COURT: Sustained.

BY MR. BEBEL:

Q. So the launch date, though, was pushed back from September 21st, in any event?

A. Yes, it was.

[17]

Q. To what date?

A. Umm, initially it was decided it would be sometime in the two weeks that followed September 21st, and then a few days later it was formally established as

October 4.

Q. And on October 4th, was any document filed with the SEC, Securities and Exchange Commission?

A. Yes.

[19] * * * * *

Q. Well, do you recall what happened to the price of Pillsbury stock after this document was filed?

A. Yes. On October the 4th, after the offer was announced and this document was filed, the price of the stock rose dramatically from the, ah, the trading price of the day — on the day before, the close of the day before, business day before, to, ah, slight — slightly below $60 per share.

Q. And do you recall where this trading range was the day before?

A. I —

Q. Is there any reference in the tender offer prospective or offer to purchase documents?

A. Yes, there is an offer to purchase, a table that lists the trading price. Umm, from this I do remember that the — the price was in the thirties during the period prior to the offer. And then on the day before the offer, the close was 39 and 1/8.

Q. And once the price shot up, how — well, let me rephrase that. How quickly did the price move up?

A. My recollection was that trading was suspended that morning, that trading was halted, and so the opening bid [20] price was at that — that number right below $60 per share. So it rose from 39 up to almost 60.

Q. And was that rise in line with expectations?

A. Yes, it was.

Q. Now, as for the exhibit that you're referring to, Government's Exhibit 52, when did you start drafting that document?

A. I began drafting that document late in July or very early August.

Q. And how many revisions did you go through?

A. Probably the best word to use is countless. It was revised a number of times.

Q. Well, were any steps taken to keep that document confidential while you were working on these drafts and revisions?

A. Ah, yes, there were steps taken. The, umm, the document was on a word processing disk, and, umm, the only person who had access to that disk was my secretary.

I kept the disks locked in my desk at night, and, ah, we also did not include the names of either Pillsbury or the Grand Metropolitan in those disks or in the hard copy of the document until very late in the tender offer process. We also tried, to the fullest extent we could, to keep the document on our premises so that it could not get out to, ah, any third parties.

[21] * * * * *

A. Well, the focus was to try to keep the document in [22] as few hands as we possibly could. We didn't want to send the document out by any means to anybody working on the team in the hope that it would remain as confidential as it possibly could.

Q. And were any other steps taken to preserve the confidentiality of that document?

A. Well, there were a number of steps taken in connection with the confidentiality of this document and confidentiality generally. One of the primary steps was the formation of a working group. Basically consisting of people who had an absolute need to know about the transaction and to read this document. We also did our best at all times to use only documents that had code names in it or no names at all, in order to keep anyone from knowing who the target was. And to the fullest extent we could, we tried to limit absolutely the production of documents generally so there wouldn't be a lot of writing relating to the possible offer.

Q. Well, why were you trying to keep this matter confidential?

A. Well, there were really two primary reasons. One was a legal reason, the other was a business reason. We first believed that we had a legal obligation to insure that the information did not fall into the hands of people who would appropriate it for improper use. That's the legal reason.

[23]

The business reason is that the making of a hostile offer at a substantial premium over the existing market price has a substantial psychological effect on both the company and the shareholders, and we wanted to insure that information did not get out, there by leading to a run-up in stock price, reducing that psychological advantage.

Q. Well, how would this information bring about a run-up in the stock price of Pillsbury?

A. Well, to the extent that information relating to the possible offer became public, ah, people would begin to trade on it, and it would cause the price to rise, because

it would be more demand for the shares.

Q. And if the price rose, ultimately what could happen?

MR. HAWKINS: Your Honor, I object as calling for speculation.

THE COURT: You may answer.

THE WITNESS: If the price rose, it would almost certainly reduce the psychological advantage involved in offering a significant premium over the offer price. It might itself also lead to a, the possibility that in order to gain the company the bidder might pay more, have to pay more when all is said and done.

BY MR. BEBEL:

Q. Well, why do you say that?

A. In the context of these hostile offers, it is sometimes [24] the case that bidding contests, umm, will ensue, or you will have a company interposing its, umm, I'm sorry this runs into some rather technical terms, but interposing its shareholder rights plan or poison pill in an effort to deter or delay the offering.

And if you've lost that psychological advantage, it was our view that you might end up in a situation where in order to end the offer quickly you might just raise your price and end up paying more than you originally would have if you could have made it a traumatic [*sic*] first strike with a traumatic [*sic*] premium over the existing offer price.

Q. Could you go through that again using a little bit more simple language?

THE COURT: If a stock is at $20, an offer to buy at 60 is more exciting than if the stock were at 50.

THE WITNESS: Yes, Your Honor.

THE COURT: I think we've now killed the horse.

MR. BEBEL: Okay. Well, we'll move on then.

BY MR. BEBEL:

Q. While you were — well, let me back up. Are you familiar with Dan Dorfman?

A. I'm familiar with who — who he is.

Q. Well, who is he?

A. He is a, umm, a syndicated columnist and I believe sometime television commentator on financial matters.

[25]

Q. And while you were working on the deal, did you ever become aware that Dan Dorfman had made comments about the possibility of Grand Met making a bid for Pillsbury?

A. Yes, I did.

Q. And when did you become aware of Dorfman's comments in relation to when those comments were made?

A. Umm, I learned the next day, through a summary of press reports relating to Pillsbury that were circulated by the public relations firm that was involved in the offer.

Q. What general time frame were these comments made?

A. My recollection was that the comments were made in the — in the range of late August of 1988. Could have been early September, but I believe late August.

Q. Now, after you became aware of those comments, did you — did you discuss those comments, Dorfman's comments, with anyone?

A. Yes, I did.

Q. And who did you have this discussion with?

A. Well, I had the discussion with, umm, Kirsten Feldman, who was a vice president of Morgan Stanley, and Paul Walsh, who was the chief financial officer of Grand Met's offices in the United States.

Q. And this conversation would have occurred when?

A. Okay. My recollection is that it occurred the early afternoon of that next day, after the Dorfman comments.

[26]

Q. And Kirsten Feldman, her area of expertise was what?

A. She was a vice president focusing on mergers and acquisitions at Morgan Stanley.

Q. Now, as a result of this conversation, it was decided to do what?

A. We decided to do nothing.

Q. Why did you decide to do nothing?

A. We advised Grand Metropolitan that they had no duty, ah, no obligation at all to respond to the market rumor like that. And, umm —

Q. Well, why do you characterize it as a rumor?

A. I characterize it as a rumor because, umm, in part it was — it was almost couched as a rumor. It was — it was — if I remember correctly, part of a general discus-

sion by Mr. Dorfman of sort of general financial gossip at the time. And, umm, he characterized it as something that he had heard. It was never characterized as any sort of official announcement by anyone either at Pillsbury or Grand Metropolitan.

Q. So why else did you decide to do nothing?

A. Well, at that time it was really — there was really nothing to do. It had not changed the dynamics of the offer process at all. It was — it was really considered by our working group to be a nonevent.

Q. And just briefly, why was it considered to be a [27] nonevent?

A. Well, at that point we were focused on things that would affect the timing of the offer, or the price that would be paid. And when we stood back and looked at all the events surrounding the announcement, with the timing, the substance of what was said, and what appeared to us to be a lack of market reaction to the — to the, ah, Dorfman comment, it didn't seem that any response would be necessary, even if Grand Metropolitan had any obligation to respond, which they did not.

Q. And what do you mean by lack of market response?

A. Ah, I had — I had myself looked at the trading that had occurred in the stock, and also consulted with Kirsten Feldman, and there had been a discussion to the effect that there had been no reaction or virtually no reaction in the common stock market with respect to the remark Dorfman had made.

[30] * * * * *

Q. Well, were there any expectations as to what

would and would not be done with this information at Dorsey & [31] Whitney.

MR. HAWKINS: Object as being irrelevant, Your Honor.

THE COURT: You may answer.

THE WITNESS: Well, it was certainly my expectation that the information would be held in strictest confidence. Umm, and then —

BY MR. BEBEL:

Q. By strictest confidence, you mean what?

A. I — I had had discussions with — specifically with Tom Tinkham about the, the processing of information within the firm, I discussed with him what our procedures were at Cravath in terms of the protection of confidential information. And, umm, he and I generally discussed the fact that the information was confidential and was to be limited to those people who had a strict need to know the information in connection with the work that Dorsey & Whitney would do for Grand Metropolitan in connection with the offer.

[61] * * * * *

[MR. HAWKINS:]

Q. And in fact, the first time that the price of $60 was ever thrown around was on September 15th, 1988, correct?

A. It was the first time that I heard any discussions on the part of the senior management of Grand Metropolitan as to what their price would be. There was certainly discussion within the working group earlier as to what the price might be.

Q. Well, there was a meeting held on September 15th, 1988, correct?

A. That's correct.

Q. And one or the purposes of this meeting was try to come to a determination of what might be reasonable in making the tender offer, correct?

A. The purpose of that meeting was for Morgan Stanley primarily, but also S. G. Warburg to come in and make an official presentation as to what they thought the price should be. It was the time they were going to give their recommendation.

[66] * * * * *

Q. Now, by September 15th, 1988, Dorsey & Whitney's law firm was no longer involved in any of this, correct?

A. That's correct.

Q. Now, do you recall the actual date that you were advised that Dorsey & Whitney would not be involved in this any longer?

A. Yes, I do.

Q. What day was that, sir?

A. September the 9th, 1988.

* * * * *

Q. Now, you were advised, and I'm not — maybe you can tell me by who, that Dorsey & Whitney had not realized there [67] would be hostile litigation in regard to Pillsbury, correct?

A. That — that was stated to me by Thomas Tinkham.

Q. Do you know when that occurred?

A. Yes, I do. It was on, ah — it was on Sunday the 11th of Sep —

Q. Do —

A. I'm sorry. Two days later.

Q. Two days after they'd already gotten out, you called or he called you?

A. Well, what had happened was, if I'm not mistaken, the call from Dorsey to Maulsby was really just to inform Maulsby that this — Dorsey was going to withdraw. Umm, at that time we were very concerned about the impact of that, and I — I called and tried to reach Thomas Tinkham before I got on an airplane back to New York. I was not able to reach him, but left word with his office that I would like to speak with him over the weekend, and I actually did get in touch with him on Sunday where we had a, a long conversation about the reasons why they wanted to withdraw.

Q. And one of the reasons was they did not realize it would involve hostile litigation, correct?

A. That was the — that was the phrase he used.

[70] * * * * *

Q. Now, when Dorsey & Whitney were initially contacted, they were contacted and asked by Cravath, Mr. Maulsby and yourself?

A. Yes.

Q. To research two issues, correct?

A. Are you referring to issues with respect to their possible engagement or substantive issues relating to the offer.

Q. Substantive issues. And let me see if this helps you. When Dorsey & Whitney were contacted, one of the things you wanted them to learn for you was the status of what's known as the Minnesota anti-takeover law, correct?

A. It's been a long time now. If I remember correctly, there were two Minnesota statutes. One was the old takeover disclosure statute which was a rather old statute. And the other was a more recent anti-, general anti-takeover statute, shareholder rights, protection statutes, and I believe we did ask them to look at the latter.

[95] * * * * *

BY MR. BEBEL:

Q. How — how confident were the — how confident were you that this tender offer was actually going to take place?

A. At any particular point in time?

Q. Well, say — let's talk about the end of August.

A. There was really no doubt in my mind at that point that barring some unforeseen problem, that we would make the tender offer. And by that I really mean some problem affecting Pillsbury itself.

Q. And you had had that position beginning when, approximately?

A. The first day that I met Ian Martin and Paul Walsh I knew that they intended to acquire Pillsbury. That was on July the 13th, 1988. Obviously people's plans can change, but they seemed very determined and, umm, frankly well equipped to engineer such a tender offer.

Q. And you were asked about the issue of security. What was the overall satisfaction from your perspective with respect to whether this tender offer information, tender [96] offer information was kept confidential?

A. I was very satisfied with the overall level of protection. I felt that people had understood what the precautions were to be and they had followed them very carefully throughout the entire process.

Q. And had you ever had any concerns as to whether this information about the upcoming tender offer had actually leaked out into the market as a whole?

A. Into the market as a whole? No, there were never any concerns that there had been any dissemination of the information or leaks of the information to the market as a whole.

Q. And why do you say that?

A. Well, I — it was certainly my view that if there had been such a leak the price would have reacted, umm, in a reasonably dramatic fashion.

Q. And you didn't see that?

A. I did not ever notice any trading volume or price movement. That would have been significant enough to signal such a dissemination.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FOURTH DIVISION

Criminal No. 4-92-219

UNITED STATES OF AMERICA, *PLAINTIFF,*

v.

JAMES HERMAN O'HAGAN, *DEFENDANT.*

Volume V
January 25, 1994

TRANSCRIPT OF PROCEEDINGS

HAD BEFORE THE HONORABLE
JAMES M. ROSENBAUM, and a Jury
Minneapolis, Minnesota

APPEARANCES:

For the Government	Christopher Bebel Jon Hopeman
For the Defendant	Charles Hawkins
Reported By:	Dawn M. Sampson, RPR-CM

* * * * *

[TESTIMONY OF JOHN SCHENK]

[MR. HAWKINS:]

[13]

Q. Now, Government's Exhibit 56, you've testified about the first page being the new file requisition, correct?

A. Correct.

Q. Who's the client?

A. The client is Cravath, Swain, and Moore.

Q. Is there any reference in there about a client by the [14] name of Grand Metropolitan?

A. No.

Q. If I were to call your records department, that's the name of the file, also, would it not be?

A. That's correct.

Q. So if I wanted to find out whether or not there was any file for a law — or for a company by the name of Grand Metropolitan or try to check to see if there was any representation of Grand Metropolitan, this wouldn't help, correct?

A. That particular document would not help.

Q. And this would be the name that would also be in the records center for the file, correct?

A. Correct.

[TESTIMONY OF ROBERT STRUYK]

[MR. BEBEL:]

[37]

Q. How did that business come into the firm?

A. Ah, it came into the firm through a partner of the firm, Peter Dorsey. Came in by referral from, ah, a law firm in New York. The name of Cravath, Swain and Moore.

Q. How long has Peter Dorsey been a partner in the firm, approximately?

A. He was a partner before, ah, I was a partner, so I suspect that it must have been 35 years ago.

[38] * * * * *

Q. Now, when Grand Met became a client in 1988, was it a new client?

A. Yes.

Q. And during that time period, was anything done to keep this matter confidential, the fact that you were working on behalf of Grand Met?

A. Ah, Yes.

Q. Well, what was done in that regard?

[39]

A. Ah, at the time that the client, ah, came in, and Mr. Dorsey spoke to me about it, we spoke about the necessity for keeping the matter confidential. Umm, we tried to limit the information to as few people as possible, on a kind of need-to-know basis within the firm. We, ah, opened the file, not under the name of Grand Met, but under the name of Cravath, Swain, and Moore, and

expedited the file opening, ah, in order to, ah, prevent wide publication, ah, of the opening of the file.

Q. Can you tell us what you mean by expedited? Can you explain that a little bit further?

A. Ah, the normal procedure was to open a file in the name of the client, and we — which would have been Grand Met in this case, but we chose to open it in the name of Cravath, and, ah, to, umm, ahm, provide on the various documents opening the file a minimum of information.

Q. Okay. And showing you Exhibit 56, take a minute to put your glasses on. Would you look at the first two documents within that exhibit and tell us if in any way those evidence your intent to keep this matter confidential?

A. Ah, yes, they do.

Q. Just briefly, walk through that.

A. Well, the new file requisition, which is Exhibit 56, ah, has the client name as Cravath, Swain, and Moore, and the fact that the billing is to be sent to Mr. Alan Parker at [40] Cravath, Swain, and Moore. It does not mention Grand Met. It refers to the subject matter of the representation as general, and there is a notation on this document which was signed by Mr. Tinkham and Mr. Dorsey, that this matter has been cleared with Robert Struyk.

Q. Second page also has a description of the matters to be worked on as general matters?

A. Yes. Second page is the client screening form, which would normally have details relating to the nature of the representation. But because of the confidentiality we omitted all of that information.

Q. Okay. All right. Let's shift gears a little bit. After Grand Met became a client, did any tension or disagreement develop within the firm as to whether or not the firm should be doing this work on behalf of Grand Met, and also I suppose you're going to have to tell us what kind of work you were expecting to do on behalf of Grand Met.

A. To answer the first question, yes. It developed almost — attention developed almost immediately. Umm, and the work that we were retained to do was in connection with a tender offer that Grand Met was considering making for the Pillsbury Company.

Q. Tell us a little bit about this tension that started to develop.

A. At the time that Mr. Dorsey told me that we had been [41] approached to represent Grand Met, I expressed concern to Mr. Dorsey about that representation. My concern stemmed from the fact that we had previously been asked to present, ah, businesses from outside Minnesota in terms of hostile takeovers of Minnesota companies, and a number of, ah, the lawyers, partners in our corporate department felt very strongly that we should not be in the position of taking on representation of, ah, of people, of companies attempting hostile takeovers of Minnesota companies, because it injured our relationship, which is very strong in the community, with the business community.

Q . So that was the view of the corporate department. What about the litigation department, though?

A. I think that the litigation department felt that we should take those matters on because it meant a lot of additional and very interesting work in terms of litigation area.

Q. Now, Mr. Struyk, after this tension started to surface, were these different viewpoints discussed at any meeting which you attended?

A. Yes. They were.

Q. When did that meeting take place?

A. Ah, that meeting took place on August 26th, the morning of August 26th of 1988.

Q. And was a decision reached at that meeting with respect [42] to whether or not the firm would go forward with the representation?

A. Ah, yes, we —

Q. What was decided?

A. It was decided that we would continue the representation.

Q. Was that decision later reversed?

A. Yes, it was.

Q. Approximately when did that happen?

A. It was reversed on September 9th.

Q. Now, while you were the managing partner and chairman of the policy committee, did the firm have in place any formal policy outlining the nature of the attorney-client relationship?

A. Ah, yes, it did.

Q. And by attorney-client relationship, I mean, attorneys within Dorsey & Whitney, vis-a-vis clients that your attorneys were representing?

A. Yes.

Q. And if you look at Exhibit 53, is that, ah, the policy

that was in place during 1988?

A. Ah, yes, this appears to be a copy of that policy.

Q. And who in the firm received a copy of this policy? Who was it distributed to?

A. This was a part of the lawyer's manual, and, ah, I believe also the office manual, certainly the lawyers' manual which was distributed to all associates and partners in the firm.

* * * * *

[MR. HAWKINS:]

[57]

Q. Now, after it's reviewed and the file gets opened, the file goes down to the records —

A. The file request goes down to the record center.

Q. And they open the file?

A. That's — they open the physical red folder file, yes.

Q. Put the name on it?

A. Yes

Q. And that's predicated upon the screening form, correct?

[58]

A. The screening form is one of the documents that is required before that's done, yes.

Q. Okay. So in looking at Government's Exhibit 56, this new file requisition and the attached client screening form go down and become part of the client file?

A. They go down to the record center. I'm not sure, I cannot recall whether they actually became a physical part of the file or whether they were retained in the record center.

Q. And then the record center generates a file, and identifies the client, based upon the client matter information that's contained on the new file requisition?

A. That's correct.

Q. So the file room is unaware of anything that happened between the lawyers involved in this, or who some hidden client or otherwise may be, correct?

THE COURT: Want to try that question again?

BY MR. HAWKINS:

Q. Yeah. They're only privy to the information that's sent down on this form, right?

A. Generally true.

Q. And specifically in this case, Mr. Tinkham talked to you about the need for extreme confidentiality, correct?

A. That's correct.

Q. And the file room wasn't told about any of these things, [59] correct?

A. Ah, I think I called the file room to tell them that, ah, they were to open the file with that minimal amount of information.

Q. Which was very scant in contrast to the normal screening and the normal information that they get?

A. That's correct.

Q. But you didn't advise them of anything in regard to Grand Met, correct?

A. Ah, no, sir.

Q. And so the file then was opened in the name of Cravath, Swain, and Moore with the billing to go to Cravath, Swain, and Moore, correct?

A. That's correct.

[61] * * * * *

Q. Back in 1988, the policy for a lawyer support staff, or any other individual associated with the firm for buying or selling a security of a public held company was [62] to check the file room to determine whether the publicly held company was a client of the firm, correct?

A. Ah, yes, I believe that's right.

Q. And in this case, with Government's Exhibit 56, and Defendant's Exhibit 19, if you were to call the file room and ask whether or not Dorsey & Whitney represented Grand Met, you would be advised, no, they did not, correct?

A. On the basis of this information, yes, I think that's what you would have been told.

Q. And that's what the obligation that you put on the lawyers at Dorsey & Whitney in determining whether or not they could trade in securities, correct?

A. That's correct.

Q. Now, if indeed the file room told the lawyer, yes, we're involved in litigation with Grand Met, then the lawyer is supposed to contact the billing lawyer of the client that's been identified, correct?

A. Yes, if the file room, not only with litigation, but if the file room had indicated we represent Grand Met, not only litigation.

Q. In anything, right?

A. That's correct.

Q. So on or about July 12th, 13th, 14th, 15th, all the way through September 9th when Dorsey & Whitney withdrew, anybody from a librarian to an associate in house development, or whatever part of the firm they were in, [63] called the file room and said, to check, do we represent Grand Met? Based upon your knowledge they would have been advised, we have no involvement with Grand Metropolitan?

A. That's correct.

Q. And based upon the procedures that you had at Dorsey & Whitney, they then would have been able to go and invest in Pillsbury stock, correct?

A. Yes.

Q. And in fact, on page 6 of Government's Exhibit 53, that's exactly what's provided for under implementation and demonstration of compliance, correct?

A. That's correct.

Q. And so we understand the scope of this, if I happened to have been officing next door to Tom Tinkham back in July of 1988, and I have some extra money laying around, and I wanted to invest in Pillsbury, under what you know about the way this file was, I would have checked to invest my money and I would have been free to do so under your firm's policies, correct?

A. I believe that's correct.

[TESTIMONY OF THOMAS TINKHAM]

BY MR. BEBEL:

[86]

Q. And you're a partner in the firm?

A. I am.

Q. And you've been a partner for approximately how many years?

A. Nineteen.

Q. And have you held any positions within the firm? If so, tell us about them.

A. Yes, I have. I have been on a number of committees in the firm, including the recruiting committee, the finance committee, the professional personnel committee, the partner [87] review committee, and, ah, I was chairman of the trial department, the litigation department at Dorsey and Whitney for three years, or three and a half years during the period '86 through '89, and I'm currently responsible at Dorsey and Whitney for the quality of practice, including issues about how we practice law, what we do in particular situations, claims made against the firm, ah, and work with various lawyers in those kinds of settings.

Q. Okay. Let's go to 1988. During 1988 did the law firm of Cravath, Swain, and Moore contact the Dorsey and Whitney law firm?

A. Yes.

Q. And when did you first learn that this contact had been made and tell us what the nature of the contact was, also.

A. I learned of it sometime in mid July of 1988 in a

conversation with, ah, Peter Dorsey and Bob Struyk, which they told me that the firm had been contacted by a man by the name of Alan Maulsby at Cravath, and asked if we were [88] interested in participating in some work that they were involved in.

Q. And then did the — did you later learn who this work — well, let me rephrase that. Was a file opened up after this contact was made?

A. Yes.

Q. And the name Cravath was put on the file?

A. Correct.

Q. And did you speak with any Cravath attorneys yourself?

A. Ah, yes.

Q. Okay. What Cravath attorney, or —

A. I believe his name was Alan Parker.

Q. And how soon after this contact had been made did you begin speaking with Alan Parker?

A. By late July of 1988.

Q. And by that time, had you been advised as to what the nature of the services were that you were being asked to provide?

A. Yes.

Q. And what was your understanding as to the nature of those services?

A. There was a company by the name of Grand Met, ah, that was, ah, primarily an English company that was interested in acquiring all of the stock of Pillsbury Company in Minneapolis. And in connection with that,

the people at [89] Grand Met would need to know a good deal about the law of the state of Minnesota as it applied to an acquisition like that. And they might also need some assistance in, umm, litigation or trial work in the event that there was litigation or trials of that kind in Minnesota involving a dispute that might develop over this proposed acquisition.

In addition, as it developed, they were also interested in, umm, whether or not Dorsey and Whitney could provide some services along the lines of introducing the people at Grand Met to various officials at the state and the county and so on.

Q. And this acquisition was to be brought about through what?

A. The acquisition was to be brought about, as I understood it, by the purchase of stock, a stock offering.

Q. A tender offer?

A. I think that's an apt — that's a word I'd use, yes.

Q. And as for these services that your law firm was to provide, who was to head up that representation?

A. Well, at least with regard to, ah, anything having to do with trial and litigation, I was.

Q. Now, after this business had been brought into the firm, did any tension or disagreement develop as to whether or not the firm should be doing this kind of work?

A. Yes. Yes, it did.

[90]

Q. Okay.

A. Although, let me just say that the tension was

there and preexisted this to some extent, with regard to this type of representation.

Q. And so then how soon does this tension start focusing on this representation after the business is brought in?

A. Well, within, ah, some relatively short time after I became aware of this possible representation, I also became aware that it was the desire of Bob Struyk to make sure that the corporate department was comfortable with this, and to meet with them and talk with them about that. And I then became aware that some of the people in the corporate department weren't comfortable with this.

Q. Were not?

A. Were not.

Q. And, on the other hand, people in the litigation department, what was their belief?

A. Well, generally people in the litigation department had discussed this kind of possibility before and thought that it was something that we could and should do.

Q. So you have two opposing viewpoints within the firm, generally speaking?

A. Yes, we did.

Q. And were those opposing viewpoints discussed at any meetings?

[91]

A. Yes, they were.

Q. Let's go to the first meeting. Do you recall when that was held?

A. Well, I recall when it was, because I've checked my calendar a good number of times with regard to it. It was on the 26th of August of 1988.

[93] * * * * *

Q. And generally, what was discussed and what was decided?

A. What was discussed was the pros and cons of representing someone who was going to acquire a substantial local company. The people, Rick Swanson, and Lee Mitou, took the position that it was inadvisable, it was wrong, inappropriate for us to do so because many of our clients [94] who were in similar situations, that is they were corporations in Minneapolis, who would be unhappy with our representing somebody who was kind of acting in a threatening way to another corporation, that was local.

I took the position, and I think Bob Struyk agreed with me, that in this situation, ah, this was ordinary, normal legal work that we were being asked to do. Umm, that, ah, as long as what we were being asked to do was substantial legal work, ah, of a kind regularly done, it should be something that we could do and our clients ought to perceive it as appropriate.

We recognized a tension and a disagreement existed. It wasn't resolved, except that we decided we would go forward with the representation but continue to monitor it to insure that in fact we were doing substantial legal work.

Q. Bottom line, you decided to stay with the case for the time being?

A. Correct.

Q. And prior to this August 26 meeting, were you

giving any thought to what your position would be at the meeting?

A. I — I was.

Q. And during the period before the meeting, did you receive James O'Hagan as a visitor at your office?

A. I did.

Q. And approximately when did this occur and what was [95] discussed?

A. I — I know that that meeting was before August 26.

Q. Why do you say that?

A. Because I discussed with him at the meeting what I was going to say and what position I was going to take at the meeting that was scheduled for the 26th. So I know the meeting preceded that day. Umm, my best memory is that it was a few days before then, but I can't be any more specific than that.

Q. Well, what causes you to think it was a few days before the August 26th meeting?

A. Because I had the meeting on my mind, enough so that I asked, umm, Mr. O'Hagan specifically about what position we ought to take when I went to that meeting.

Q. And his response, generally?

A. His view was, ah, the same as mine at the time, that, ah, this was the kind of work that, umm, Dorsey and Whitney ought to be able to do in the appropriate circumstance.

Q. And during this meeting, did the defendant, James O'Hagan, ever say anything with respect to Pillsbury?

A. Yes, he did.

Q. Well, maybe I better back up. Can you sort of walk us through the meeting and tell us how the conversation began?

A. Well, I remember, ah, being at my desk, and I remember, ahm, Jim O'Hagan coming to my — into my office and standing [96] inside the doorway. And talking with me as he was standing there. He began the conversation by saying that he understood that I was doing work on a takeover of the Pillsbury Company, and that, ahm, I would remember, as he put it, that he hated the Pillsbury Company —

Q. And what did you you understand that reference to refer to?

A. I had known for a good long time that Jim had a substantial case against the Pillsbury Company, or one of its subsidiaries, Green Giant, and that, umm, there had been a relatively high degree of animosity in the lawsuit. So that when he said that, that's what I thought, that he was referring to the case involving Green Giant.

Q. Okay. Keep walking us through it.

A. In any event, he, ah, he said, well, you know, I, I, umm, I don't like them, or I dislike them, and I would be interested in working on this case. Umm —

Q. And what was your reaction to that?

A. Well, my reaction was negative, and I said, umm —

Q. Why was your reaction negative?

A. My reaction was negative for two reasons, as I recall. First of all, umm, Jim O'Hagan and I had sub-

stantially different manners of approaching cases. And, umm —

Q. Explain that —

MR. HAWKINS: Well, Your Honor, that's irrelevant, [97] beyond that.

THE COURT: Sustained.

BY MR. BEBEL:

Q. Okay. So what was — what was your reaction?

A. What did I say?

Q. What did you say?

A. What I said to him was that I didn't believe that there was, umm, a lot of legal work developing on this. And, umm, it didn't seem like that would be something that would make any sense. Or words to that effect.

Q. And did you, ah, also alert him as to this tension?

A. Well, I remember saying to him that there was a question about whether we were going to continue this representation, and that I had to go to a meeting to discuss this with our corporate department that was taking its usual position that we shouldn't be doing this. And I asked him what he thought about it.

Q. And that's when he gave the response you previously discussed?

A. Correct.

Q. Now, who was more senior in the firm at the time?

A. He was.

Q. And does the fact that he was more senior in the firm have any bearing on your ability to remember this

conversation?

[98]

A. Yes.

Q. Explain that.

A. In a law firm, a large law firm like the one we were both in, typically the more senior lawyers are in charge of matters and the more junior lawyers work for them, and in fact, ahm, when I had started at Dorsey and Whitney and for six or seven years thereafter I worked on a number of matters, ah, for Jim O'Hagan when he was in charge of them. So that this was an unusual circumstance for me with somebody who was more senior in the trial department coming and asking me to work on a case where I was in charge.

Q. Okay. Let's move on a little bit. At the time he came into your office and began discussing this, did you — well, why was it that you were willing to discuss this matter with him? Did you think you were doing anything improper?

A. No. And as to the question why, umm, the first answer — the first part of the answer is because he asked, and the second is because he was a partner in the Dorsey and Whitney law firm.

Q. Well, what does that mean?

A. Umm —

Q. In what way did that, ah, allow you to think it was proper to discuss this with him?

A. Well, there may be some circumstances in which we try to keep information narrowly confined within the law firm about a client matter. The practical fact is, and the legal fact is, that all partners are charged with the

same knowledge, whether they really know it or not. So that, umm, any partner in the law firm has the right to know what is being done by the partnership. That's the essence of a partnership, as far as I'm concerned.

[106] * * * * *

[MR. HAWKINS:]

Q. And during this three to five minute conversation, during whatever time frame you had, you never talked to Mr. O' Hagan about Grand Met, correct?

A. You mean specifically mentioned Grand Met?

Q. Correct.

A. I don't remember.

Q. That's something you would have remembered, however, if it had happened, correct?

A. I don't know.

Q. It was important at the time, correct?

A. I don't think that who the acquirer was was particularly important in the conversation, no.

Q. That you guys were having?

A. I don't think it was important in our conversation.

Q. Because what the conversation was about was the general policy at Dorsey and Whitney about being involved in hostile takeovers, correct?

A. No. The conversation was about two things. The first of which was Mr. O'Hagan's desire to work on this specific matter, and the second was our general policy.

[107]

Q. So part of the conversation was about a general

policy relating to noninvolvement of hostile takeovers of local companies, fair?

A. That's correct.

Q. And the second part of the conversation was Mr. O'Hagan's willingness to work on this matter, correct?

A. Well, except you have them reversed. That was the first part of the conversation.

Q. I'm not trying to put them in any order, I'm just trying to identify the subjects.

A. Those are the two subjects.

* * * * *

[TESTIMONY OF DOUGLAS CARNIVAL]

BY MR. BEBEL:

[121]

Q. Okay. Let's move on then, the next point. And you, your firm, represented Grand Met in connection with what?

A. Ah, the bid to acquire the Pillsbury Company, sir.

Q. By means of a tender offer?

A. Yes, sir.

[122] * * * * *

Q. And prior to the time the bid was announced, did you limit the number of people involved in the matter in any way?

A. Yes, sir. We, ah, when we were retained, we, umm, convened a meeting of a very small group of people in the firm. The members of the management committee, if I remember, along with a few other people who would be actively working on the file, umm, and limited the, the, ah, information about the retention by Grand Met to that group.

Q. And why did you limit the flow of this information?

[123]

A. Ahm, because we were instructed to by the client, and by the Cravath firm, and because it was important to keep this information confidential, ah, because of its potential impact, if it were disclosed.

Q. And what potential impact did you believe there might be?

A. Ah, typically in a tender offer, the bid for the company is made at a price above the market price, and if that information, the fact that an actual bid was going to be made was disclosed, and someone knew with it, they'd be able to buy the stock at a price, at the market, and receive again, ah, at the time of the tender offer of the premium between the market and the tender price.

Q. So besides limiting the flow of information, what else did you do to keep this matter confidential?

A. Ah, we opened the file under a code name, umm, so as not to have any information in our office with either Grand Met's name on it or Pillsbury's name on it, and any documents or, ah, other materials that existed in the office used those code names.

Q. And how usual or unusual was it to use code names in connection with a case?

A. That's the first time we had had that experience, sir.

Q. Now, while you were working on this matter, did you have any [124] knowledge as to whether there had been any newspaper articles or magazine articles which talked about Pillsbury as a possible target of a takeover?

A. Ah, I can't tell you exactly the time frame, but I do recall on — I generally read the two local newspapers and the Wall Street Journal, generally on a regular basis, and I recall there being articles in, ah, one or all of those newspapers about Pillsbury as a potential target of a takeover along with obviously many other companies along the way.

Q. All right, then, if you had read these articles which talks — talked about Pillsbury as being a possible takeover target, why were you using code names and

limiting this information?

MR. HAWKINS: Your Honor, asked and answered.

THE COURT: Sustained. You may answer.

Overruled.

THE WITNESS: Ah, because we had actual information that a bid was going to be made, and that information is what — what's important to people. If you actually know a bid's going to be made, then you've, you've got the kind of information to, ah, to, ah, that other people don't have.

BY MR. BEBEL:

Q. And how did that differ from what was in these articles?

[125]

A. Those articles were all, I suspect, speculation, that something, that Pillsbury might be the target of someone's acquisition. The information that we had once we were retained was that, ah, this particular company was going to make a bid for this, ah, this company, Pillsbury, and that's very different from just general articles in the newspaper. It seems to me.

[TESTIMONY OF DANIEL STIBILE]

BY MR. BEBEL:

[134]

Q. After a customer makes a particular trade, are confirmation slips printed out?

A. Yes, they are.

Q. And what happens to these confirmation slips, and what information is reflected on these confirmation slips?

A. Confirmation slips are sent out to the clients, it's [135] stating what they did for whatever the trade may be. And the amount of money that's due.

Q. Well, let's look at Exhibit 38. Do you recognize the first document within the exhibit and the third document?

A. Yes.

Q. Are those confirmation slips?

A. Yes, they are.

Q. Okay. And also when orders are executed on the Exchange on the floor, where the security is traded, are order tickets filled out?

A. Yes, they are.

Q. Or — okay. And are order tickets also filled out by the broker after they receive an order?

A. Yes.

Q. Now, do you see any order tickets in this packet marked as Exhibit 38?

A. Yes, on the second page.

Q. And these order tickets, or this order got filled out by who?

A. It would be the broker.

Q. Okay. And all the documents within Exhibit 38, are they prepared and kept in the ordinary course of business?

A. Yes, they are.

Q. And let's look at the order ticket in Exhibit 38. That references the purchase of what security, and on what date?

[136]

A. 50 calls of Pillsbury options.

Q. On what date?

A. On — excuse me — 8/30 of '88.

Q. And whose account?

A. Mr. O'Hagan's account.

Q. James O'Hagan?

A. James O'Hagan.

Q. Okay. And the second confirmation slip references the purchase of what securities on what day, and in whose account?

A. 50 calls of Pillsbury options done on 9/8 of '88 in James O'Hagan's account.

Q. Now, if we could look at these account statements, prior to the period of August '88, does it reference the purchase of any options in the account of James O'Hagan?

A. Yes, it does.

Q. Okay. Tell us about that.

A. On the statement as of, for settlement of 6/5, there's five contracts being purchased on the MCA options.

Q. And aside from these five contracts in MCA options, does it reference any options being purchased in this account prior to August 1988?

A. No, it doesn't.

Q. And have you looked over that document prior to coming here today?

[137]

A. Yes, I did.

MR. BEBEL: Your Honor, I have a note from my learned colleague that I did not offer 37a or 38, so I now do so.

MR. HAWKINS: I have no objection, Your Honor.

THE COURT: 37a and 38 are admitted.

BY MR. BEBEL:

Q. Now, when an order for the purchase of options is received in a particular — let me back it up. By looking at any of these documents, can you tell where these Pillsbury options were traded?

Okay, you just pointed to something. Does anything that you pointed to let you know where these options were traded?

A. From where the, umm, report came back from, it has the letters A Z on it. Back when we traded them that would be the AMEX floor.

Q. American Stock Exchange?

A. Yes.

Q. Is that a national stock exchange?

A. Yes, it is.

Q. Located in New York, right?

A. Yup.

Q. And during 1988, when an order for to purchase some options was received in an office of Janney Montgomery Scott, how did the broker go about transmitting that order [138] to the American Stock Exchange?

A. He would give it to the order clerk, who would then enter it through our computer system, and then it would go, depending on how many contracts, it would go to the floor and then they would execute it from down there.

Q. So it's transmitted electronically?

A. Yes.

Q. And if you look at the monthly account statements, does it show whether the options that were purchased in the account of James O'Hagan were ever sold? And tell us, if so, when they were sold and how much money was received at the time of sale?

A. They were sold on 10/4 of — 10/4 of '88.

Q. And in case I didn't ask, those confirmation slips, how soon after the trade are they sent out?

A. As soon as the trade's done, the following morning they'd be sent out.

Q. And are they sent out through the U.S. Mail?

A. Yes, they are.

Q. And do they act as a receipt in any way?

A. Yes, they do.

Q. Well, explain that. Why do they act as a receipt?

A. Well, it confirms, it states the price of what is owed and counting — including commissions. And also on the back of the confirm, it states the, if you were sending a check [139] through the mail, to please send a receipt with it. The confirm splits into two parts.

MR. BEBEL: May I have a minute, Your Honor?

THE COURT: Yes, sir.

(Pause.)

BY MR. BEBEL:

Q. Now, on 10/4 when the options were sold, how much money was received?

A. One trade was for $76,195.94. That was 59 contracts. And 41 contracts for $53,310.70.

* * * * *

[TESTIMONY OF JUDY KALLAUS]

BY MR. BEBEL:

[159]

Q. And you see references to 5,000 shares of Pillsbury [160] being bought in the account of James O'Hagan, right?

A. That's correct.

Q. The customer name is listed here?

A. That's correct.

Q. And here, for the record, means top lefthand corner. And walk us through what — walk us through how to interpret the information listed on the line which says two, and then it gives a date of 8/3 and it says 5,000 Pillsbury?

A. Okay, the two indicates the type. The type determines whether it's a cash trade or a margin trade.

[161] * * * * *

This column indicates here that they bought, you either have a sale or a buy, this is the case that he bought 5,000 shares. Pillsbury Company is the name of the security purchased. This is the price per share that he purchased it at, which is 36 and an eighth, and this amount here is the net amount of the trade. The total number of dollars that the trade cost.

Q. Okay. So this would have been bought then on what day, July 27?

A. July 27th would be five business days prior, so that's the date that the order was actually entered.

Q. Okay. And let's just move down a little bit —

THE COURT: Now, the purchase price was how much, ma'am?

THE WITNESS: Purchase price is $36 — 36 and an eighth per share. That's the purchase price. The net amount of the trade was $182,108.54.

THE COURT: Now, what is 36 and an eighth mean?

THE WITNESS: That's 36 — that's representing dollars. So 36 and one-eighth dollar, or 36.125.

THE COURT: 36.12 and a half, right?

THE WITNESS: Right. Exactly.

THE COURT: Whew (whistles).

THE WITNESS: That indicates dollars.

BY MR. BEBEL:

Q. Do you see an entry relating to that sale of those same 5,000 shares not long afterwards?

A. Okay. This —

Q. Do you want to take the green —

A. Sure.

Q. — green marker? This would be the sale of those securities. Settlement date would be August 10th, which would be a trade date of the third? This column indicates that it's a sale instead of a purchase. Indicates that it's [163] Pillsbury stock again. The stock was sold at 38 and a quarter, which is 38.25. Per share. And the proceeds of the sale was 189,875.62.

Q. Okay. Now, we've gone through the purchase of Pillsbury stock. Do you see a reference down below that to the purchase of Pillsbury options?

A . Yes. This is the —

Q. Here's the — and here's the green marker once again. And you can just hold onto it, I'll get another marker.

Tell us how to interpret the information on the line you've just circled in green, which for the record says 2, then gives a date 8/19/'88 and references 20, call Pillsbury.

A. Okay, this indicates that 20 contracts were bought for settlement date of 8/19, which would mean trade date would have been 8/18, the prior business day.

[165] * * * * *

THE WITNESS: So this indicates on trade date August 18th for settlement of 8/19, he bought 20 contracts of Pillsbury calls, umm, September forties.

BY MR. BEBEL:

Q. What does September 40 mean?

A. September is the expiration month of the option, 40s —

Q. When does the September due day expire?

A. Third Friday of September.

Q. And it would have been September of what year?

A. 1988. Expiration is September 17th, 1988. So they're placed as September 40s because 40 is the striking price.

Q. Okay. You're going to have to tell us what that is.

A. Okay. The striking price is if the stock hits a certain price by the certain date whether the option could or could not be exercised. Whether they would buy the stock at that price.

Q. And if the price of Pillsbury would be selling below 40 at the end of the day on 9/17, what would happen?

[166]

A. The option would expire worthless. If it trades above 40, then there — then it could be exercised at the price of 40 .

[168] * * * * *

Q. Okay. Now, let's look at pages 4 through 7 of the statements for the same period, August 29th through [169] September 30th. Because it's 4 of 10 through 7 of 10. And why don't you just look along with me. 4 of 10, what's reflected on that page?

A. Ah, purchase of Pillsbury options. Seven of 'em. They're dated from August 31st through September 6th.

[179] * * * * *

Q. We were looking at these charts. You were just getting your pointer and your marker.

A. Now, we left off, and you were explaining that this is a blowup of one of the pages in 34 and 34a, and this blowup is page 3 of 10 of the period August 29th through September 30th?

A. Yes, it is.

Q. Okay. And generally, ah, what type of information is set forth on this account?

A. The top section lists out the securities and options, it's a summary of what is owned within the account at the end of the month.

Q. At the end —

A. On September 30th, 1988.

Q. Okay. And what does that show with respect to all of his holdings as of September 30th, all of his holdings of options?

A. Okay. This section here is the options section.

Q. Okay. Why don't you circle that.

A. Okay. Okay, this summarizes the options that are owned. They're all owned in Pillsbury Company. Long means they're options that you own. That's what long means. They're call options. This is the, ah, expiration month, the striking price, the actual expiration date, and this is [180] the number of contracts that's owned of each of the different options. And this is the market value of the options at the end of the month, not necessarily what was paid.

Q. Okay. So we don't have any — any September options here, right?

A. No.

Q. Why is that?

A. The September options would have, ah, been sold or expired. They no longer exist after their expiration date.

Q. And where — where — tell us what these October 40, October 45s are, the November 30.

A. Okay. As was shown in the purchase, it tells you what the expiration month is. That's the month that the option would expire. It's the third Friday of the month. That's the striking price, the price that the stock would have to be trading at to determine whether it's going to be —whether it's going to expire or it's going to be exercised. And this is the actual date that it expires. And

then that's the number of contracts.

Q. Okay. Now, and when you say this is the number of contracts, you mean there's two thousand Pillsbury October 40s?

A. Exactly.

Q. That had been bought by the defendant in his account?

[181]

A. That's right.

Q. And that's how many he held as of the end of the month?

A. That's correct.

Q. And he had bought 100 October 45s, and he held that in his account as of the end of the month?

A. That's correct.

Q. And he had bought 300 November 40s and held those in his accout as of the end of the month?

A. Yes, that is correct.

THE COURT: Now, ma'am, when it says number of contracts there, are those contracts each a contract for a hundred shares?

THE WITNESS: That's correct.

THE COURT: So the 2,000 —

THE WITNESS: 2,000, to tell you how many shares you're controlling, you add two zeroes, so that would be controlling —

THE COURT: 200,000.

THE WITNESS: 200,000 shares. Right.

[182] * * * * *

Q. And during your years in the securities business, have you ever seen any other situation where an individual has accumulated that many call options in his account?

[183]

A. No, I never recall seeing such a large position in options. I never have seen a position this large in options.

[184] * * * * *

Q. Now, after all these call options have been bought by the defendant in his account, what does he start doing in October?

A. In October we see several sales. A whole page of sales of those options.

[185]

Q. And what page are you looking at?

A. That's page 4 of 9 of the October 1 to October 30, '88, statement.

Q. And when are these sales taking place, what's the date of the sale?

A. The date of the sale would be October 4th, because the settlement date is October 5th, as date indicated on that statement.

Q. Okay. And do you see anything other than a reference to sale of Pillsbury options on October 4th on page 4 of 9?

A. No. Those are all sales of options. That's exactly what it is.

Q. Okay. And 5 of 9, what's reflected on that page?

A. Umm, all the entries for 10/5 and 10/6 are sales of options, the last four entries are a couple purchases of options, and a couple security purchases. Most — it's mostly sales of the options.

Q. All right. And those sales are taking place on October 4, and then you see a couple on October 5th also?

A. That's correct.

Q. That one, the ones that have the date of 10/6, those sales actually took place on 10/5?

A. Correct.

[188] * * * * *

Q. And when a customer purchases securities in his or her account, or sells securities in his or her account, are confirmation slips are printed up?

A. Yes, they are.

Q. And then they're sent out to the customer?

A. Yes, they are.

Q. By U.S. mail?

A. Correct.

Q. Okay. And those confirmation slips tell what the purchase or sale price was, and on what date the transaction took place and so on?

A. That's correct.

Q. Okay. And those are prepared in the ordinary course of business, right?

A. Yes, they are.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FOURTH DIVISION

Criminal No. 4–92–219

UNITED STATES OF AMERICA, *PLAINTIFF,*

v.

JAMES HERMAN O'HAGAN, *DEFENDANT.*

Volume VI
January 26, 1994

TRANSCRIPT OF TRIAL

HAD BEFORE THE HONORABLE
JAMES M. ROSENBAUM, and a Jury
Minneapolis, Minnesota

APPEARANCES:

For the Plaintiff:	Christopher Bebel, Esq. and Jonathan Hopeman, Esq.
For the Defendant	Charles Hawkins, Esq.
Reported By:	Dawn M. Sampson, RPR-CM

* * * * *

[TESTIMONY OF JUDY KALLAUS]

MR. HAWKINS:

[31]

Q. What was the percentage of his options in relation to his portfolio after he had purchased the Pillsbury options in 1988?

A. Just over ten percent.

Q. His position in options in 1988 in Pillsbury was basically the same as it was the year before in 1987?

A. On a percentage basis, yes.

[34] * * * * *

REDIRECT EXAMINATION

BY MR. BEBEL:

Q. On August 2nd, there is an article that appears in the Minneapolis paper talking about Trump's big time purchases in Pillsbury, right?

A. Correct.

Q. And on August 3rd, the defendant places an order to sell what?

A. Traded August 3rd, he sold 5,000 shares of Pillsbury.

Q. So he's selling the day afterwards?

A. Correct.

[46] * * * * *

Q. Now, this first purchase in Government Exhibit 35 relates to the purchase of Pillsbury forties on August 29th, right?

A. Correct.

Q. And showing you Government Exhibit 47, which is a printout of Pillsbury stock prices, on August 29th, Pillsbury stock was — it closed at what?

A. Thirty five and five eighths.

Q. So then those October forties were out of the money?

A. Correct.

Q. Because the striking price of forty was higher than the current market price of the stock?

A. Correct.

* * * * *

[TESTIMONY OF MICHAEL MULLIGAN]

[73]

MR. BEBEL:

Q. And let's get back to Government Exhibit 41, the [74] confirmation slip. That reflects a purchase by the defendant on what day?

A. Trade date was 9-20-88.

Q. And what type of securities were bought?

A. Bought was 5,000 shares of Pillsbury Company.

Q. And do you recall taking that order from the defendant?

A. Yes.

Q. Tell us what happened on September 20th when the defendant placed that order.

A. Mr. O'Hagan came into my office, and I asked him what he had been doing in the market, and he said his broker down south had bought some Pillsbury stock for him, and I said, well, why don't you buy some through me.

Q. And then what happened?

A. And he said all right. Go ahead and buy 5,000.

* * * * *

[75]

Q. Why did you direct her to mark it unsolicited?

A. Because I didn't feel that I had solicited an order to buy Pillsbury as an investment or trade idea. It was just basically asking for a piece of business.

Q. Explain that further.

A. In that Mr. O'Hagan spent a lot of time in my office, basically he would be in probably once a day, I felt that he should give me some commission business for the right of sitting at my area and punching my quotetron, drinking my coffee. I figured that I should be paid for that, and this is one way to do it. Give me some business, basically.

Q. And did you suggest in any way what company he should focus this business on that he was going to give you?

[76]

A. You mean which stock to buy?

Q. Yes.

A. At that moment, obviously, I meant Pillsbury, because he had just told me that they were buying some down south, and so I expected him, you know, when I said why don't you buy some from me, that it would be Pillsbury that he might give me an order in, yes.

Q. And, well, around this time period, what were your own thoughts with respect to the advisability of an investment in Pillsbury?

A. Well, there had been an awful lot of rumors, of course, about the takeovers and —

Q. What were you doing in your own account in connection with those rumors?

A. I had bought some stock earlier in the month and sold the stock out just prior, I think, to Mr. O'Hagan buying stock from me.

Q. When did you sell your stock?

A. I believe I sold it on the 19th.

Q. Of what month?

A. Of September.

Q. And he bought his 5,000 shares what day?

A. On the 20th.

Q. Well, why were you selling on September 19th, [77] given the fact that there were all these rumors in the market?

A. You know, at the time, there was so many, and at times, I, you know, where there is smoke, there's fire, so to speak. At times I thought, gee, there might be something to these rumors, so I would go from believing that, gee whiz, maybe Pillsbury is going to get taken over to thinking gee, what a — it's not a very well managed company, I can't imagine anybody wanting to buy it, and, so, in general, I think I bought and sold the stock twice. I thought there was enough, at least, rumors out there that, certainly, I could trade the stock just on the rumors that might take the stock up in value, so when I sold it on the — the 19th, I can't recall exactly why I sold it, but I would think that I didn't believe that it was going to get taken over.

[105] * * * * *

Q. And so what does that say with respect to rapid dissemination that this tender offer was just around the corner?

A. You know, it would appear that the information, if there was any information, wasn't affecting the price of the stock.

[TESTIMONY OF DAVID KUKURA]

[181]

MR. BEBEL:

Q. And give us a summary as for the option contracts which were purchased, how many were purchased through Shearson and how many through Janey, Montgomery, Scott?

A. The total purchases charged or the total purchases?

Q. Well, how about the total purchases that were charged?

A. Total purchases charged, there were 3,000 — or, I'm sorry. Total purchased charged, there were 2,5000 in total. 100 —

Q. How many purchases of options were there in total?

THE COURT: Let me back up. How are we using the word charged, as when I go into Dayton's?

MR. BEBEL: No. Reflected in the indictment.

So there's 2,500 option contracts reflected in the indictment?

THE WITNESS: That's right.

BY MR. BEBEL:

Q. And there were 3,000 contracts in total [182] purchased?

A. Correct.

Q. And of those 3,000, how many were purchased through Shearson, how many through Janey, Montgomery, Scott?

A. 2,900 through Shearson or Robinson, Humphrey, and 100 through Janey, Montgomery, Scott.

Q. And then, of the 2,900 that were purchased through Shearson, how many are not reflected in the indictment?

A. 500 are not charged in the indictment.

Q. And just so I'm clear, then, the total number reflected in the indictment is how many contracts?

A. The total charged is 2,500.

Q. So, then, but only 2,900 were purchased with Shearson?

A. There's 2,900 option contracts in total purchased through Robinson, Humphrey or Shearson.

Q. And so 400 of those are not charged?

A. 400 of that total are.

Q. Are?

A. 500 are not charged?

Q. Well, I'm too confused, so let's move on.

The purchases that are charged occur [183] after what date?

A. They occur after August 26th, 1988.

Q. And let's talk about the stock that's charged — There is 5,000 purchases of Pillsbury stock that are charged?

THE COURT: 5,000 purchases?

THE WITNESS: 5,000.

BY MR. BEBEL:

Q. 5,000 shares of Pillsbury stock?

A. Right. Charged with 5,000 shares of Pillsbury stock.

Q. And that was purchased though Dean Whitter?

A. That's right.

Q. And there is 5,000 shares of Pillsbury stock defendant purchased through Shearson that are not charged?

A. That's right.

Q. And those were purchased prior to August 26th?

A. Correct.

Q. And had you done any calculations with respect to profits earned on the securities trades that are charged in the indictment?

A. Yes, I have.

Q. And what have your calculations shown with respect to profits earned on the purchases [184] reflected in the indictment?

A. Mr. O'Hagan earned a profit on the options and stock that are charged in the indictment. A total profit of $4.3 million, approximately.

Q. Excluding commissions?

A. Excluding commissions, that's right.

[198] * * * * *

Q. And, by the way, just so we can take another stab at it, there were 3,000 option contracts purchased in total?

A. Right.

Q. And how many of those are charged in the indictment?

A. 2,500 purchases are charged.

Q. And how many of those 2,500 were purchased through Shearson?

A. 2,400.

Q. And the other 100 through Janey Montgomery?

A. Correct.

Q. We got it. We got it that time.

[200] * * * * *

Q. And how much did he sink into Pillsbury options in August and September 1988?

A. $258,762.

[202] * * * * *

Q. As for the Pillsbury options that expired worthless, those were Pillsbury September expiration date options?

A. That's right. They expired September 17th 1988.

Q. And during what time period was he buying those Pillsbury September options?

A. It was between August 8th and August 25th, 1988.

[203]

Q. And his last purchase of Pillsbury September options occurs August 25th?

A. That's right.

Q. And after that, what does he do with respect to the expiration date of his options?

A. He begins buying options which expire in October of 1988.

Q. And even after he loses that 27,825 that had been put in the Pillsbury options and that expired worthless September 17th, does he continue buying options?

A. Yes, he does.

Q. Pillsbury options?

A. Pillsbury options, that's right.

* * * * *

[206]

Q. And Exhibit 34, this is the home equity line of credit in a mortgage?

A. That's right.

Q. And the mortgage relates to what residence, what address?

A. The address is 35 Windy Hill Road, Sunfish Lake, Minnesota.

Q. And whose address is that?

A. Mr. O'Hagan's.

Q. And the mortgage has what date on the top right-hand corner?

A. The mortgage is made the 24th day of August, 1988.

[207]

Q. Okay. And then once that — The home equity line of credit is for what amount?

A. $400,000.

[208] * * * * *

Mr. O'Hagan did take the advance on this line of credit, and they were all — he used up almost the entire 400,000 by the end of August except for a couple thousand dollars worth.

* * * * *

MR. HAWKINS:

[220]

Q. His entire investments relating to Pillsbury in [221] July, August, September resulted in an entire profit to him of approximately 4.4 million?

A. That's right.

Q. Give or take, approximately?

A. Approximately.

Q. And his total investment was approximately eight hundred plus thousand dollars?

A. Right. Eight hundred eleven thousand, approximately.

Q. So his return on his money was about five hundred percent?

A. Let's see what it is. You're right. It is, approximately.

Q. Kind of return on your money you'd like to get on your investments, wouldn't it?

A. I think everybody would, Mr. Hawkins.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FOURTH DIVISION

Criminal No. 4–92–219

UNITED STATES OF AMERICA, *PLAINTIFF,*

v.

JAMES HERMAN O'HAGAN, *DEFENDANT.*

Volume VII
January 31, 1994

TRANSCRIPT OF TRIAL

HAD BEFORE THE HONORABLE
JAMES M. ROSENBAUM, and a Jury
Minneapolis, Minnesota

APPEARANCES:

For the Government	Christopher Bebel, Jon Hopeman
For the Defendant	Charles Hawkins
Reported By:	Dawn M. Sampson, RPR-CM

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[TESTIMONY OF JAMES CONSIDEINE]

BY MR. HAWKINS:

[33]

Q. Now, directing your attention to approximately August of 1988, did there come a time where you were involved in a substantial trade in Pillsbury stock?

A. That's correct.

MR. BEBEL: Objection, irrelevant.

MR. HAWKINS: I'll connect it up, Your Honor.

THE COURT: Sustained.

BY MR. HAWKINS:

Q. In 1988, on or about August 18th, did you have a conversation with Jim O'Hagan regarding Pillsbury?

A. On August 18th?

Q. Yes, sir.

A. Ah, yes.

Q. What was the conversation that you had with Mr. O'Hagan about?

MR. BEBEL: Objection, hearsay.

THE COURT: Subject matter —

MR. HAWKINS: Subject.

THE COURT: — it may be permitted. Just, what was the nature of the subject? What were you talking about that day?

BY MR. HAWKINS:

Q. What was the nature —

A. I was talking about an order that I had in Pillsbury.

[34]

Q. From whom?

A. From one of my London accounts.

Q. How large?

A. The order or —

MR. BEBEL: Objection, irrelevant.

THE COURT: Overruled.

THE WITNESS: How large what, order?

BY MR. HAWKINS:

Q. Was the order from your client in London, England?

A. 250,000 shares.

Q. Options, stock, margin, how was it purchase?

A. Just — an order to buy 250,000 shares of Pillsbury at the market not held.

Q. What does at the market not held mean?

MR. BEBEL: Well, that's irrelevant, and we object.

THE COURT: Overruled.

THE WITNESS: At the market not held means that the trading department at Montgomery, ah, I take it back. It, it goes — it's technical, but it means that the order when it's given to the floor broker on the New York Stock Exchange is, it means that he has some discretion as to what price he wants to pay for it. But basically it means he has to participate in the volume, ah, as a stock trades, it's his — the market not held means he

has to be there, he has [35] to be buying the stock, but if for some strange reason it ran out, on the way up or way down, he has the discretion to hold off buying them. It basically means you want to complete the order the same day.

BY MR. HAWKINS:

Q. Unless you have some very unusual change in price?

A. Yes.

Q. Did you relate this information to Mr. O'Hagan at all?

MR. BEBEL: Objection, hearsay.

THE COURT: Overruled.

THE WITNESS: Ah, I told Mr. O'Hagan, after I had completed the order, that I'd had this large order, and bought a big block of stock for an account of mine.

BY MR. HAWKINS:

Q. When did that occur?

A. It occurred after I completed the order, I don't know what time of the day it was. It was on the 18th after I completed the order, I got back to my desk, and, ah, and had a conversation with Jim and mentioned that I was, you know, pretty happy because I had this large order that I'd executed that day.

Q. And you told him the amount of the order and the stock that it was in?

A. That's correct.

Q. Did you also identify where the purchaser of that stock [36] was from?

A. I —I think I told him I had an order from London, I didn't tell him the name of the account.

* * * * *

[81] [COLLOQUY BETWEEN COURT AND COUNSEL]

THE COURT: Okay. All right. So what did Grand Met lose?

[82]

MR. BEBEL: Well —

THE COURT: It's a simple question, counsel.

MR. BEBEL: Grand Met need not —

THE COURT: Counsel, my goodness, this case has been pending a year and a half.

MR. BEBEL: I'm sorry?

THE COURT: This case has been pending a year and a half.

MR. BEBEL: Grand Met lost the right to exclusive use of its information. And the testimony is that when there's —

THE COURT: But we already know for a moment, that the record says he didn't know it was Grand Met's information.

[84] * * * * *

THE COURT: So the loss, I'm trying to figure out — they were victimized by the fact that somebody took something off one of their tables. Picked up some [85]

information from.

MR. BEBEL: Well, they were victimized by Mr. O'Hagan taking information and misappropriating it into his own personal benefit. There's no specific evidence as to the manner in which he first obtained the evidence, to whether it was by conversation or by documentation.

[TESTIMONY OF PATRICIA KINNAHAN]

MR. HAWKINS:

[100]

Q. Now, did you ever make a recommendation to Mr. O'Hagan that he should purchase Pillsbury?

A. Yes.

Q. Did you recommend — when did that occur?

A. In August of 1988.

Q. Do you recall approximately what date?

[101]

A. The recommendation would have been on, I'm trying to think of the date, August 19th, I think.

Q. Did you recommend that he purchase that stock or solicit — solicit him to purchase whether it's stock or options through Janney Mont — through Janney Montgomery at that time?

A. I suggested that he purchase options at the time.

Q. Through you?

A. Yes.

[104] * * * * *

Q. What happened on August 18th?

A. On August 18th, I was watching the Dan Dorfman show when there was an announcement on air that Mr. Dorfman said that sources close to Grand Metropolitan were interested in acquiring Pillsbury.

Q. What did you think of that?

A. Well, I was excited, and a little bit nervous actu-

ally because I didn't have any position on Pillsbury and ran into the office first thing in the morning to see what this activity was going to be like, contacted Mr. O'Hagan because when I got in the office I didn't really see any further information on it. I thought there would be some news that would be out. Or something in the Wall Street Journal. There was — there was nothing on the 18th. I con —

Q. What did — what did you think Dan Dorfman's statement [105] was?

A. Well, you know, I'm a Washingtonian, and I hear every day of my life the sources close to the White House say, you know, umm, Mr. Highman will be leaving the Department of Justice, and a day later, guess what? Mr. Highman leaves the Department of Justice. So I thought something would be going on.

Q. What did you tell Mr. O'Hagan?

A. Well, I asked Mr. O'Hagan, first of all, I thought there may be something in your local paper. I was curious to see if we had some follow up locally on it, and there wasn't. And it intrigued me, because I waited all day and watched the news wires to see a statement from Pillsbury.

Q. What?

A. Well, generally when, umm, statements come out to that effect, if a Pills — if a company is really active, like not interested in being acquired, you usually have some kind of statement from them saying that, you know, we are going to remain independent or some kind of —

Q. They let their posture be known?

A. No. We never heard. We never heard from Pillsbury.

Q. Was that important to you?

A. Yes, it was very important. As a matter of fact, I would say that was probably the most important. Not what they said, but what they failed to say.

[106]

Q. So then you had a conversation with Mr. O'Hagan.

A. Yes. Then —

[105] * * * * *

Q. Prior to the conclusion of your conversations with Mr. O'Hagan on the 17th, 18th, and 19th, had any authority been given you to purchase Pillsbury options?

A. Yes.

Q. When did that occur?

A. On August 19th.

Q. When did you execute that authority to execute the trans —

A. On August 30th.

Q. Eleven days later?

A. Right.

[118] * * * * *

Q. You previously testified about this Dorfman matter on the 18th and then ran right into the office the next morning and were checking on things that were going on. Do you recall that?

A. Yes.

Q. What did you think what Dan Dorfman said was?

THE COURT: Asked and answered.

THE WITNESS: Right.

BY MR. HAWKINS:

Q. Did you tell Mr. O'Hagan what you thought in that regard?

A. I told Mr. O'Hagan I thought it was an announcement.

Q. By who?

A. Grand Metropolitan.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FOURTH DIVISION

Criminal No. 4–92–219

UNITED STATES OF AMERICA, *PLAINTIFF,*

v.

JAMES HERMAN O'HAGAN, *DEFENDANT.*

Volume VIII
February 1, 1994

TRANSCRIPT OF PROCEEDINGS

HAD BEFORE THE HONORABLE
JAMES M. ROSENBAUM, and a Jury
Minneapolis, Minnesota

APPEARANCES:

For the Government	Christopher Bebel, Jon Hopeman
For the Defendant	Charles Hawkins
Reported By:	Dawn M. Sampson, RPR-CM

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[TESTIMONY OF STUART EVANS]

MR. HAWKINS:

[11]

Q. Don't forget that. We'll come back to it. Now, back in July, you and Mr. O'Hagan talked about purchasing Pillsbury stock, correct?

A. Yes, sir.

Q. What was that conversation you had with him?

A. Ah, I —

Q. As best you recall?

A. As best I recall, I told Mr. O'Hagan, I said, ah, you know, I think there's something going on in this Pillsbury, ah, why don't — why don't we buy some of it, and, ah, I'm thinking about buying 5,000 shares for myself, and why don't you buy 5,000 shares, I think this guy, Kelly, but it was in the period of time when the takeover, ah, it was takeover [12] mania. It was Kraft had been, ah, played on, several of the major food companies had been targeted as takeovers, if not actual takeovers, but as rumor for takeover. So I told Jim, I says, why don't, why don't we buy, you know, why don't we buy this thing and see if, you know, any play comes into it. And, umm, so he said, okay, sure, if I got the money, he said, ah, let's buy it, and I'll buy 5,000, you buy 5,000. So we did. We bought 5,000 shares apiece, and, umm, I thought basically nothing of it.

Q. Was it unusual for Mr. O'Hagan to buy 5,000 shares of stock?

A. No, sir.

[13] * * * * *

Q. What did you base your solicitation on back in July, as best you recall?

A. A takeover.

Q. Of what?

A. Of Pillsbury.

[14] * * * * *

Q. Did there come a time when you talked to Mr. O'Hagan about purchasing options?

A. Yes, sir.

Q. When did that occur?

A. This was in the same period of time.

Q. Approximately when?

A. Approximately, ah, August the first.

[28] * * * * *

Q. And how many September 40s did Mr. O'Hagan purchase between August 18th and August 24th, taking into account that the settlement date's reflected in the account statement?

A. It appears that 500 call options in Pillsbury that were struck, ah, September 40s, would have been purchased, 500. 500 calls.

Q. Now, were those September 40s in your opinion solicited or unsolicited?

A. I would consider 'em solicited.

* * * * *

Q. Had you talked to Mr. O'Hagan previously about

the purchase of options?

A. Ah, yes, sir.

[31] * * * * *

Q. So the first purchase of 500 September 40s occurred between August 18th and August 25th, correct?

A. Yes, sir.

Q. And during that —and that was for 500 shares of September 40s?

A. 500 calls.

Q. Right? I apologize. 500 contracts, correct?

A. Yes, sir.

Q. And that 500 contracts is basically the same thing, or would cover the same option for that 5,000 shares of common stock. They'd be a hundred shares per contract, correct?

A. 500, ah — no. 50 is 5,000 shares. 500 would be 50,000 shares.

Q. Okay. So he had 50,000 shares in the options?

A. That's correct.

Q. And he had 5,000 shares in common stock?

A. Yes, sir.

[45] * * * * *

Q. When these contracts were purchased, whether it's October 40s, November 45s, that much purchased through you, who recommended what month and strike price should be purchased?

A. Generally I did.

MR. HAWKINS: Can I have a moment, Your Honor?

THE COURT: Yes, sir.

(Pause.)

BY MR. HAWKINS:

Q. Now, the order for the October, 2,000 October 40 contracts, do you consider that solicited or unsolicited, sir?

A. It was solicited.

Q. By whom?

A. By me.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FOURTH DIVISION

Crim. No. 4-92-219

UNITED STATES OF AMERICA, *PLAINTIFF,*

vs.

JAMES HERMAN O'HAGAN, *DEFENDANT.*

Volume X
February 3, 1994

TRANSCRIPT OF TRIAL

HAD BEFORE THE HONORABLE
JAMES M. ROSENBAUM, and a Jury
Minneapolis, Minnesota

APPEARANCES:

For the Plaintiff	Christopher Bebel, Jon Hopeman
For the Defendant	Charles Hawkins
Reported By:	Dawn M. Sampson, RPR-CM

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[TESTIMONY OF PAUL WALSH]

MR. HAWKINS:

[3]

Q. During 1988, was there any business development that was being looked at by Grand Metropolitan?

A. Yes. We were in the process of exiting our hotel division. If I can just go back a little bit before that, starting in 1987, we fundamentally decided to refocus our business, particularly in the United States, whereby we divested ourselves of many businesses that we felt were nonstrategic, one of which was the hotel division, and focused on acquiring a branded food company.

[4]

Q. And that strategy commenced back in 1987?

A. Yes.

Q. Now, at that time, were there any specific plans entered into by Grand Met in identifying individual companies or branded food companies that they may be interested in?

A. Probably in late '87, we had a list of companies that were of interest.

[7] * * * * *

Q. Now, there came a time — let me go back. Did [8] Intercontinental Hotels play any role in your plans that you were analyzing?

A. Very much so.

Q. Would you explain to the jury how Intercontinental Hotels played a role in your analysis?

A. We had decided strategically to withdraw from hotels, which would mean a sale of that entity. We estimated at that point in time that the value of that property could be anything like 1.8 to $1.3 billion. Therefore, recognizing the size of the Pillsbury acquisition, the sale of Intercontinental Hotels would provide a lot of the cash to fund the acquisition of Pillsbury.

Q. What would have happened to your plan if you were unable to obtain a purchaser for the sale of the Intercontinental Hotels?

A. Had we not found a purchaser of our hotel division, we would have delayed the acquisition of Pillsbury until we found such a purchaser.

[17] * * * * *

Q. Turning back to the Intercontinental Hotel sale for a minute, did there come a time when you traveled to Tokyo, Japan?

A. Yes.

Q. Approximately when did you leave?

A. Approximately the 22nd, 23rd of September.

Q. When did you return?

A. I returned, I think it was the 1st of October.

Q. What was your purpose for going there?

A. I was negotiating the sale of Intercontinental Hotels to — with the final buyer, which was the Salod Group of Japan.

Q. In regard to your trip and its purpose, prior to your leaving, did you have a deal for the sale of Intercontinental Hotels?

A. No.

Q. Did you have a deal when you came back?

A. Yes.

[20] * * * * *

Q. Now, when did you first learn that a tender offer indeed would be made for Pillsbury?

A. I learned when I returned from Tokyo.

Q. What date was that?

A. It was the Saturday. It would be the 1st, the 1st of October.

Q. Approximately two or three days, actually, before the tender offer?

[21]

A. Yes.

Q. Now, I'm showing you what's been received in evidence as Defendant's Exhibit 11. Do you recognize that, sir?

A. Yes.

Q. What is it, sir?

A. It's a newspaper article.

Q. From where?

A. From the UK Press.

Q. Now, under the caption with the photograph, it says Sheppard looking at acquisition which would fundamentally change Grand Met?

A. Yes.

Q. That's dated the 18th of September, correct?

A. That is written in by hand.

Q. Looking at acquisition, would you characterize that as being a fair statement?

A. That would be a very fair statement, yes.

Q. Had a decision been made about an acquisition at that point?

A. Eighteenth of September. A decision had been made in principle that we would like to acquire Pillsbury. However, the decision to actually launch the hostile tender offer had not been taken.

[26] * * * * *

Q. Does that refresh your recollection as to what the date was that the $60 recommendation was made?

A. Yes.

Q. What date was that, sir?

A. September the 15th.

Q. 1988?

A. 1988.

Q. Now, what was eventually paid for Pillsbury?

A. $66 per share.

[36] * * * * *

Q. As a result of your understanding about whatever obligations there were, what information did you believe was necessary specifically to be maintained confidential?

* * * * *

A. Well, in essence, the target name. We needed to keep Pillsbury confidential. We needed to keep the timing confidential, and we certainly needed to keep the price [37] confidential, and our potential actions after the acquisition, we needed to keep confidential.

Q. So excluding what your plans were after you made the acquisition, price, time and identity, correct?

A. Yes.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FOURTH DIVISION

Crim. No. 4-92-219

UNITED STATES OF AMERICA, *PLAINTIFF,*

vs.

JAMES HERMAN O'HAGAN, *DEFENDANT.*

Volume XI
February 7, 1994

TRANSCRIPT OF PROCEEDINGS

HAD BEFORE THE HONORABLE
JAMES M. ROSENBAUM, and a Jury
Minneapolis, Minnesota

APPEARANCES:

For the Government:	Christopher Bebel Jon Hopeman
For the Defendant:	Charles Hawkins
Reported By:	Dawn M. Sampson, RPR-CM

* * * * *

[TESTIMONY OF DENNIS MATHISEN]

[MR. HAWKINS:]

[26]

Q. I'm showing you what's been received in evidence as Defendant's Exhibit 9. Have you seen that, sir?

A. I have.

Q. And what is that?

A. This is a, ah, a little piece that occurs in a magazine called Mergers and Acquisitions Week, and, umm, it, ah, refers to — there's an article that refers to, umm, Grand Met's, ah, acquisition strategy, ah, with respect to, ah, with respect to Pillsbury, and the reference to its disposition, its proposed disposition of its hotel operation.

Q. What's the relevancy of that article in regard to the disposition of its hotel chain?

A. Well, I think, ah, it, ah, refers to the requirement that, ah, Grand Met, ah, must raise a fair amount of cash in order to engage in the acquisition of Pillsbury. And the raising the cash is going to occur, umm, through the sale and disposition of its, ah, its hotel chain.

Q. Based upon your review of that document, as well as others, do you have an opinion as to whether or not Grand Met was successful in keeping its target, or acquisition target confidential?

[27]

MR. BEBEL: Objection, irrelevant, foundation.

THE COURT: Sustained. 403.

BY MR. HAWKINS:

Q. In Defendant's Exhibit 9, is there an identity of a target?

A. Ah, yes.

Q. What's the target?

A. Pillsbury.

Q. And is there any reference to this information having been provided by analysts?

A. Yes.

Q. And would you tell the jury what the relevancy is of analysts having provided that information?

A. Well, analysts are constantly looking at a company, umm, for clues or indications of what is, ah, ah, going to produce, ah, revenue and profit and, umm, so they keep a very close eye on the company. They talk to people, they talk to insiders as often as they possibly can. They talk to, umm, not only the president of the company, but they talk to employees, and, ah, that's how they obtain information from the inside of the company.

Q. Does it say in that article where the analysts are from?

A. UK.

Q. Now, using August 22nd, which is the date of the Defendant's Exhibit 9 article, and September 30th as the [28] date of the execution of the contract for the sale of the hotels, using those two parameters, do you have an opinion as to whether between August 22nd, 1988, and September 30th, 1988, there was any material nonpublic information that would have been relevant to an investor?

MR. BEBEL: Objection, foundation, speculation, 403.

THE COURT: You may answer.

THE WITNESS: I'm not aware of, ah, any such information.

[29] * * * * *

Q. Are you aware of any condition precedent, that makes the time frame between August 22nd, 1988, and September 30th, 1988, immaterial for purposes of there being any nonpublic information?

A. In my view, the condition precedent is the sale and disposition of the hotel chain.

* * * * *

[GOVERNMENT CLOSING ARGUMENT]

MR. BEBEL:

[88]

And he just decides to embark on a different type of stealing. Instead of stealing money, he steals another form of profit, confidential business information. Grand Met's secret plans.

And when you're thinking about that theft of confidential business information, think about the testimony of Tom Tinkham. Tinkham's testimony shows that the defendant knew about Pillsbury's plans — strike that — about Grand Met's plans, and it shows that the defendant knew Pillsbury was the object of those plans.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FOURTH DIVISION

Criminal No. 4–92–219

UNITED STATES OF AMERICA, *PLAINTIFF,*

vs.

JAMES HERMAN O'HAGAN, *DEFENDANT.*

Volume XII
February 8, 1994

TRANSCRIPT OF PROCEEDINGS

HAD BEFORE THE HONORABLE
JAMES M. ROSENBAUM, and a Jury
Minneapolis, Minnesota

APPEARANCES:

For the Government	Christopher Bebel, Jon Hopeman
For the Defendant	Charles Hawkins
Reported By:	Dawn M. Sampson, RPR-CM

* * * * *

[JURY CHARGE]

* * * * *

[THE COURT:]

[20]

Now I went over with you those first 20 counts, and those counts are mail fraud, so let's look at mail fraud. Counts 1 through 20 of the indictment charge the defendant with mail fraud in violation of Title 18, Section 1341 of [21] the United States Code. That title and section is just chapter and verse the way they catalog things in the U.S. Code Section 1341 of Title 18 of the United States Code provides, in part, and here I read exactly: Whoever having devised any scheme or artifice to defraud for the purpose of executing such scheme or artifice, knowingly causes to be delivered by mail, according to the direction thereon, any mail, shall be guilty of an offense against the United States.

Now, then, I told you I would tell you about essential elements. Now I'm going to tell what you they are, and then in a minute I'm going to tell you the things that comprise each of the elements. So you see how this all fits together.

The crime of mail fraud has four essential elements, and they are: 1) the defendant voluntarily and intentionally devised or made up a scheme to defraud Grand Met or Dorsey & Whitney out of money, property, or property rights by purchasing Pillsbury securities while in possession of material nonpublic information, and using the profits obtained therefrom to conceal his previous use and possession of client trust funds. That's the first element; 2) that the defendant did so with the intend to defraud; 3) that it was reasonably foreseeable that the mails would be used, or that the mails were used in the furtherance of some [22] essential step in the scheme.

The phrase scheme to defraud includes any plan or course of action intended to deceive or cheat another out of money, property, or property rights.

To act with intent to defraud means to act knowingly, and with the intent to deceive someone for the purposes of causing some financial loss of property or property rights to another, or bringing out a financial gain to one's self, or another, to the detriment of a third party.

The words to defraud commonly refer to wronging one in his property rights by dishonest methods or schemes, and usually signify the obtaining of something by — of value by trick, deceit, or by overreaching.

The term property rights, as used in the mail fraud statute, includes any property right which has a value, not necessarily a monetary value, to the owner of that property right.

It is not necessary that the mails — excuse me — it is not necessarily that the use of the mails by the defendant himself be contemplated, or that the defendant do any actual mailing or specifically intend that the mail be used. It is sufficient if the mails were in fact used to carry out the scheme, and the use of the mails by someone was reasonably foreseeable.

Under the mail fraud statute, each separate use of the [23] mails, in furtherance of the scheme to defraud, constitutes a separate offense. It is not necessary that the government prove all of the details alleged in the indictment concerning the precise nature, or the purpose of the scheme, or that the alleged scheme actually succeeded in defrauding anyone, or that the use of the mail was intended as a specific or exclusive means of accomplishing the alleged fraud. Now, ladies and gentlemen, that's mail fraud. And that's the way the law defines mail fraud.

Now I want to swing back with you to the indictment again. In Counts 21 — I just went over Counts 1 through 20, and you'll apply that set of instructions to that part of the indictment. And you should review again the indictment, and that is the counts for securities fraud. Those are 21 through 37. In Counts 21 through 37, it is claimed that Mr. O'Hagan used the information which came to him to work a fraud on Grand Met and Dorsey & Whitney. Now, according to the indictment, he worked this fraud by purchasing Pillsbury stock and options while he was in possession of material, nonpublic information concerning Grand Met's upcoming tender offer for Pillsbury securities. The dates of these transactions, according to the indictment, were between August 29, 1988, and September 21, 1988.

And I think I'm going to stand up and stretch, have a [24] glass, a drink of water, and then we'll go back into the elements of securities fraud.

[26] * * * * *

Okay. Now we shift to the substance of Counts 21 through 54. All of those counts charge the defendant with a particular type of securities fraud, and that is known as insider trading. Counts 21 through 37, which I'll go over with you in a moment, charge securities fraud under another chapter and title, that is Title 15 of the United States Code Section 78JB, and Title 17 Code of Federal Regulations, Section 240.10(b)(5). While Counts 38 through 54 charge a different type of securities fraud under Title 15 United States Code Section 78N, part E, and Title 17, Code of Federal Regulations Section 240.14(e)(3) A.

Now you know why you have a handwritten, or typed copy of those in front of you, ladies and gentlemen. Nobody gives that instruction off the top of their head.

Let me now focus with you on Counts 21 through 37. Title 15 United States Code Section 78J Section B, as charged in 21 through 37 provides as follows, and again I quote directly: It shall be unlawful for any person directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails to use or employ in connection with the purchase or sale of any securities, any manipulative or deceptive device or [27] contrivance in contravention of rules the Securities and Exchange Commission may prescribe for the protection of investors. That's the statute.

Title 17, Code of Federal Regulations, Section 240.10(b)(5), which is promulgated by the Securities and Exchange Commission again, says: It shall be unlawful for any person directly or indirectly, by the use of or any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, A, to employee any device, scheme, or artifice to defraud, or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person in connection with the purchase or sale of any security. With respect to these Counts 21 through 37, illegal insider trading exists when a defendant, through a relationship of trust and confidence, gains access to material, nonpublic information intended to be used only for corporate purposes, and the defendant trades in the stock of a publicly traded company using information which is not available to the public.

As for Counts 1 through 37, the offense of insider trading has the following elements, and here there are five elements. First, that the defendant gained access to, and then misappropriated material, nonpublic information, which was to be used only for Grand Met's purposes through a [28] relationship of trust and confidence; second, that the defendant traded in Pillsbury securities

while in possession of nonpublic information obtained as a result of the confidential relationship; third, the information was material; fourth, the defendant used the information to trade securities with the intent to defraud. I'm going to read that one again. Fourth, the defendant willfully used the information to trade securities with the intent to defraud; fifth, the defendant directly or indirectly used any means or instrumentalities of interstate commerce, the mails, or any facility of a national securities exchange in furtherance of his fraudulent conduct.

Now, let me focus with you on each of those elements. With respect to the first of those elements, in order for you to find that the defendant unlawfully traded in Pillsbury securities, you must find that the defendant had a duty to either Grand Met or the Dorsey & Whitney law firm. Any relationship — sorry — any duty which the defendant owed to Grand Met must have arisen from a relationship of trust and confidence, which may have existed between Grand Met and the Dorsey & Whitney law firm as a result of any attorney-client relationship which may have existed. Similarly, any duty which O'Hagan owed to the Dorsey & Whitney law firm, must have arisen from a relationship of trust and confidence which may have existed between Mr. [29] O'Hagan and Dorsey & Whitney while Mr. O'Hagan was a Dorsey & Whitney partner.

With respect to Grand Met and the Dorsey & Whitney law firm, the question is whether either or both of those entities expected the defendant to keep in confidence any information which he obtained in a legal capacity. Did either or both of them expect him to refrain from using such information in connection with his personal securities trading activities? Either or both of those entities must have expected the defendant to

keep the information confidential, and must not use it for his personal benefit, or at least the relationship must have implied such a duty. The mere possession of nonpublic or inside information does not impose a duty on an individual to disclose before trading.

Therefore, with respect to these counts, 21 through 37, in order to find that Mr. O'Hagan engaged in insider trading, you must first find that there existed some special relationship, as I have just explained it, which created that duty. With respect to those counts, it is the breach of that duty that provides the basis for these charges in the indictment.

Unless otherwise agreed, an agent has a duty to the principal not to use or to communicate information confidentially obtained by him from the principal. This [30] includes information acquired by him during the course of or on account of his agency, or in violation of his duties as an agent. This rule would not apply, however, if the information is a matter of general knowledge. You are instructed, and when I say you are instructed, that means it is the law and not a matter for dispute, that a partner in a law firm is an agent of the firm. The firm's employees and partners are agents of the law firm's client.

During the course of your deliberation concerning Counts 21 through 37, these counts we're looking at now, you must now decide whether the defendant owed a duty of trust and confidence to Grand Met, the Dorsey & Whitney law firm, or to both. If you find that a duty was owed, you must also decide whether the defendant breached that duty of trust and confidence to Grand Met, the Dorsey & Whitney law firm, or to both. The government is not required to prove that the defendant breached a duty of trust and confidence to both Pills —

I'm sorry, my heavens — to both Grand Met and the Dorsey & Whitney law firm. However, as for each of these counts, in order to convict, each juror must agree with each of the other jurors that the defendant breached a duty to Grand Met, the Dorsey & Whitney law firm, or both. In other words, there cannot be a conviction, if, for example, one half of you believe that there was a duty owed to Grand Met, and the other half believed there was a duty owed to Dorsey [31] & Whitney. There must be a meeting of minds between you and among you whether there was a breach of duty towards Grand Met, toward Dorsey & Whitney, or toward others. What I'm saying, of course, remember I told you that — your verdict, I'll tell you again, your verdict's going to have to be unanimous. You can't just think, well, you owed a duty to somebody. You have to decide was there a duty, to whom, it can be one, either, or both, and then make that decision as to each count that you deliberate on and make that decision as part of your decision making process.

The federal securities laws define a security as any stock option on a security, et cetera. You are instructed as a matter of law that Pillsbury common stock, and any option on Pillsbury common stock, including the call option, is a security.

The government must also prove that the material information possessed by the defendant was nonpublic, as the law defines it. Nonpublic means not generally available to the public. The information of a business, company is nonpublic if the company has not publicly announced, or revealed the information or disclosed it in publicly available filings, announcements, or releases, or if the company has not disclosed it to entities whose business it is to make public disclosure, such as the press, or security analysts.

[32]

Whether information is public or it is nonpublic depends primarily on whether it is generally available to the public. If the information has previously been included in a company's public filings or disclosed in public announcements or press releases, or discussed with financial analysts, it is public information. If, on the other hand, the information is held in confidence by the company, then it is nonpublic, even though there may be rumors circulating among the general public on the subject, and even though individuals who are privy to the information may improperly disclose it to other persons.

You must also decide whether the information traded on by the defendant was material information. Material information means information that a reasonable investor would consider important when deciding whether to buy, sell, or hold Pillsbury stock. Information is material when there is substantial likelihood that a disclosure of the omitted fact would have been viewed by a reasonable investor as having significantly changed the total mix of information made available.

The test, then, is whether a reasonable — I'm sorry — a prudent investor would be influenced to change or to take a market position if he or if she was in possession of this information. It is up to you to decide, based on all of the relevant evidence, whether the information was material. [33] That's the third element of the securities charge.

The fourth element which the government must establish is that defendant O'Hagan acted with intent to deceive, manipulate, or defraud. Intent ordinarily may not be proven directly, there is just simply no way of fathoming or scrutinizing the workings of the human mind. But you may infer the defendant's intent from the

surrounding circumstances. You may consider any statements made or done or statements which were omitted by the defendant, and all other facts and circumstance in evidence which indicate to you his state of mind. You may consider it reasonable to draw the inference and find that a person intends the natural and the probable consequences of acts which are knowingly done or knowingly omitted. As I have said, it is entirely up to you to decide what facts to find from the evidence.

In the context of Counts 21 through 37, intent to deceive, manipulate, or defraud may be established by proof that, A, the defendant was aware the information had been provided to him in reliance on a confidential relationship; or B, that the defendant had actual knowledge or undisclosed material information; C, that the defendant knew that the information was material; and D, the defendant knew that the information was nonpublic. Furthermore, an erroneous subjective belief that the law has not been violated is not [34] a defense to insider trading if the defendant was aware of the factors which I have just gone over.

Also, with respect to element number four, the government has alleged that the fraudulent context — I'm sorry — that the fraudulent conduct occurred in connection with the purchase or sale of securities. The government must prove beyond a reasonable doubt that the defendant used the material, nonpublic information, if any, when he purchased the Pillsbury securities.

The fifth element which the government must establish is that the defendant directly or indirectly used means or instrumentalities of interstate commerce, the mails, or any facility of a national securities exchange in furtherance of his fraudulent conduct.

The term interstate commerce, as used in these

instructions, means trade or commerce in securities or any transportation or communication relating to such trade or commerce among the several states. This element of the charge may be established if the government proves beyond a reasonable doubt that any means or instrumentality of interstate transportation or communications, and those would include the mails, or the facilities of a national securities exchange were in fact used in the scheme, or that such use was reasonably foreseeable.

In this regard, however, it is not necessary for the [35] government to prove that the defendant personally used the means or instrumentalities of interstate commerce or the mails, or used a national exchange or that such use was contemplated or intended by anyone who was involved in the scheme. It is sufficient for the government to prove that the defendant set forces in motion which foreseeably resulted in such a use. The matter, the material, or information mailed, transported or communicated or traded on any exchange need not itself contain a fraudulent representation or request money, but must be part of the overall scheme.

An intrastate, that means within the borders of a state, or an interstate, across the borders of a state, telephone call constitutes the use or the means of instrumentalities of interstate commerce as they are defined in the securities law.

Now, ladies and gentlemen, we have finished with our instructions on 21 through 37. And I will go with you and focus on those counts which remain, on Counts 38 through 54. Go back to the summary of the indictment again.

In Counts 38 through 54, the indictment charges that Mr. O'Hagan obtained material information which was

not public information, and then used it to trade in Pillsbury securities. In those counts, it is claimed that Mr. O'Hagan purchased these securities after Grand Met had taken [36] substantial steps toward the making of a tender offer. It's claimed that he acquired this information through his employment at Dorsey & Whitney. It is claimed that he used this information before it was available to the public and that he did not release this information when it came to his attention. Okay. That's another set. That's the — ah, that's the use after taking substantial steps. Let's focus on that. Again, you will read the indictment, I know, with a good deal of care.

Counts 38 through 54 charge that the defendant violated title 15 of the United States Code Section 78N, part E, and Title 17 Code of Federal — Federal Regulations, Section 2:50.14(e)(3)(A), and that is commonly known as Rule 14(e)(3)(A). Commonly known. Just the other day I'm sure you were talking about 14(e)(3)(A).

It's not necessary that you did.

Title 15, United States Code Section 78N, part E, as charged in Counts 38 through 54 provides in the part that's important here as follows: It shall be unlawful for any person to engage in any fraudulent, deceptive, or manipulative acts or practices in connection with any tender offer.

Title 17 of the Code of Federal Regulations, Section 2:50.14(e)(3)(A), which is promulgated, that means put out by, the Securities and Exchange Commission provides in its [37] elevant part, that any person who has taken a substantial step or steps to commence or has commenced a tender offer — I'm sorry — if any person has taken a substantial step or steps to commence or has commenced a tender offer, it shall constitute a

fraudulent, deceptive, or manipulative act or practice within the meaning of Section 14(e) for any other person who is in possession of material information relating to such tender offer, which is information he knows is nonpublic and which he knows has been acquired directly or indirectly from, one, the offering person, or two, any officer, director, partner, or employee, or any other person acting on behalf of the offering person, to purchase or sell or cause to be purchased or sold any of such securities or any option or right to obtain or dispose of any of the foregoing securities, unless within a reasonable time prior to the purchase or sale of such information, and its source, are publicly disclosed by press release or otherwise.

That is a large bite to chew, as you can tell as you look at it, so we break it down again. The federal securities law define the word person as a natural person, a company, et cetera. I instruct you as a matter of law, and again it is not subject to question, but you must accept it, that Grand Met is a person within the meaning of the federal securities laws for these purposes.

The provisions governing Counts 38 through 54, then, [38] cover the specific situation of insider trading with respect to tender offers. With respect to these counts, illegal insider trading exists when a corporation has taken a substantial step toward the commencement of a tender offer, and the defendant obtains material nonpublic information concerning that tender offer, and the defendant, knowing that this information came from the corporation, invests in securities using material nonpublic information.

As to Counts 38 through 54, there are six elements. First, that Grand Met has taken a substantial step or steps to commence a tender offer for the stock of

Pillsbury; second, that the defendant was in possession of material information relating to this tender offer, and the defendant knew the information was material; third, the information was nonpublic and the defendant knew that the information was nonpublic; fourth, that the defendant knew that the information had been acquired directly or indirectly from a tender offeror, or any officer, director, employee, or other person or firm acting on its behalf; fifth, that the defendant purchased or caused to be purchased Pillsbury common stock or options on Pillsbury common stock using this material, nonpublic information; sixth, the defendant willfully purchased or caused to be purchased the Pillsbury securities with the intent to defraud.

Ladies and gentlemen, I have previously gone over a [39] number of instructions and definitions which will guide your analysis as to whether or not the information was material, and whether or not it was nonpublic. I also instructed you with regard to intent. While focusing on 38 through 54, those same instructions will apply.

Another concept that is the same for 21 through 37 and 38 through 54 is the in connection with requirement. For Counts 38 through 54, you must find that the fraudulent conduct occurred in connection with the tender offer for Pillsbury stock. So I've defined those things for you, and those are consistent definitions right on through. I will now address, however, those elements of Counts 38 through 54 which differ from those which relate to the previous or other counts.

With respect to Counts 38 through 54, you must find that Grand Met had taken one or more substantial step to commence its tender offer for Pillsbury stock at the time that O'Hagan had purchased the relevant Pillsbury securities. It is not necessary for a bidder to make a tender offer for you to find that substantial steps towards such an offer have been taken or made. Nor is it necessary that you find that the defendant knew that the substantial steps had been taken. It is enough that you find one or more substantial steps were in fact taken.

The fourth of the elements of Counts 38 through 54 is [40] that the defendant knew that the information about Grand Met's plan to make a tender offer for Pillsbury stock had been acquired directly or indirectly from Grand Met or any officer, director, employee, or other person acting on Grand Met's behalf. The government alleges that the defendant knew that the information had been acquired from either Grand Met or from Tom Tinkham, or Thomas Tinkham.

If you find that the defendant acquired the information from Thomas Tinkham in order to satisfy the fourth element, you must also find that the defendant knew Mr. Tinkham was working on Grand Met's behalf, such that the defendant knew that the information was acquired from Grand Met. The government is not required to prove that the defendant knew that the information had been acquired directly or indirectly from both Grand Met and Thomas Tinkham. However, as for each of these counts, in order to convict, each juror must agree with each other juror, that the defendant knew that the information had been acquired directly or indirectly from Grand Met, from Thomas Tinkham, or from both. And again, there must be a meeting of minds among the jurors as to whom or what was the source of the information. It can be Tinkham, it can be Grand Met, it can be both. Six and six, three, three, and three — no, that math is lousy. Four, four, and four, or any other combination doesn't work. It's got to be 12/0 that it came from [41] one, another or both. Okay.

It is not an element of the offenses which are charged in this indictment that the defendant knew the actual identity of the company making the tender offer. It's sufficient that they knew there was a tender offeror. Whether or not the name was attached to the tender offeror is not an essential element of the proofs.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FOURTH DIVISION

Criminal No. 4-92-219

UNITED STATES OF AMERICA, *PLAINTIFF,*

v.

JAMES HERMAN O'HAGAN, *DEFENDANT.*

Sentencing
October 27, 1994

TRANSCRIPT OF PROCEEDINGS
HAD BEFORE THE HONORABLE
JAMES M. ROSENBAUM, and a Jury
Minneapolis, Minnesota

APPEARANCES:

For the Government	Christopher Bebel
For the Defendant	Charles Hawkins
Reported By:	Dawn M. Sampson, RPR-CM

* * * * *

[24] [DENIAL OF MOTION FOR AQUITTAL]

THE COURT: Mr. O'Hagan, this is probably going to take a couple of minutes if you feel like you'd rather sit, you may do that also. I begin, for the record, by denying [25] the post trial motions for acquittal. I find that the law was proper, the prosecution was properly conducted under the law, and the findings of the jury's determinations are supported in the record. This is as difficult a case in sentencing as I have ever had in my career. In some ways, and I mean it, Mr. O'Hagan, I have found it as affecting a case as obviously your counsel has. Unlike many — the lawyers in town, it was not part of my practice to have done work in areas that intersected with yours, and the first time I ever met you, I think you conducted a case in front of me. And did so well.

[27] * * * * *

But all of those things, and I attempt to balance them as well as I am able, I have attempted to take into consideration, as I've made the findings which I will now announce vis-a-vis first of all the Guidelines, and then as I've attempted to fashion the sentence which I will impose. First, it is clear that the jury has found you guilty of all 57 counts of an indictment. That indictment contained 20 counts of mail fraud, 34 of securities fraud, and three of money laundering. The Court is convinced, as I've indicated, that that verdict is supported by the evidence.

AO245S (D.Minn. Rev. 3/95) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA

v.

JAMES HERMAN O'HAGAN

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 4-92-CR-219(01)
Def.Counsel: Charles Haskins

The defendant was found guilty on Counts 1 through 57 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

Title & Section	Nature of Offense	Count
18 U.S.C. § 1341	Mail Fraud	1 - 20
15 U.S.C. §§ 78j(b) & 78ff(a) and 17 C.F.R. § 240.10b-5	Securities Fraud	21 - 37
15 U.S.C. §§ 78o(c) and 78ff(a) and 17 C.F.R. § 240.14e-3(a)	Securities Fraud	38 - 54
18 U.S.C. § 1957	Money Laundering	55
18 U.S.C. § 1956(a)(1)(B)(i)	Money Laundering	56 - 57

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay a special assessment of $2,850, for Counts 1 - 57, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's SSN: 469-34-2625

Defendant's DOB: April 14, 1936

Defendant's Mailing Address:
35 Windy Hill Road
Sunfish Lake, MN 55077

Dated: October 27th, 1994

JAMES M. ROSENBAUM, U.S. District Judge
Sentence Imposed: October 27, 1994

Defendant: JAMES HERMAN O'HAGAN
Case Number: 4-92-CR-219(01)

Judgment: Page 2 of 5

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 41 months.

The Court recommends a federal correctional institution or a jail-type facility in Duluth, Minnesota, for service of sentence. The Court notes that Duluth is appropriate since defendant was a model prisoner who made substantial contributions to society, in particular to fellow state prisoners, since his state court conviction.

The defendant shall surrender to the United States Marshal for this district.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy Marshal

Defendant: JAMES HERMAN O'HAGAN
Case Number: 4-92-CR-219(01)

Judgment: Page 3 of 5

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall comply with all federal, state, and local laws; comply with all rules and regulations of the probation office; abide by the standard conditions of supervised release as recommended by the sentencing commission; not possess any firearms or other dangerous weapons; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions: defendant shall pay not less than $500 per month alimony to his former wife.

The Court directs that the probation office furnish to the defendant a written statement of all of the conditions of his supervised release.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit truthful and complete written report within the first five days of each month.
3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probatio officer.
4) The defendant shall support his or her dependents and meet other family responsibilities.
5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons.
6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administe any narcotic or other controlled substance, or any paraphernalia related to such substances.
8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administere
9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any perso convicted of a felony unless granted permission to do so by the probation officer.
10) The defendant shall permit a probation officer to visit his or her at any time at home or elsewhere and shall permi confiscation of any contraband observed in plain view by the probation officer.
11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a l enforcement officer.
12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agenc without the permission of the court.
13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by t defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make suc notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: JAMES HERMAN O'HAGAN
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Judgment: Page 4 of 5

FINE

The defendant shall pay a fine of $150,000. This fine includes any costs of incarceration and supervision. This fine shall be paid as directed by the Probation Office.

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

Defendant: JAMES HERMAN O'HAGAN
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STATEMENT OF REASONS

The Court adopts the factual findings and guideline application in the presentence report, except as stated below:

Guideline Range Determined by the Court:

Total Offense Level:	24
Criminal History Category:	I
Imprisonment Range:	41 to 51 months
Supervised Release Range:	3 to 5 years
Fine Range:	$4,248,111 to $12,744,336
Restitution:	N/A

The Court finds, and the United States Attorney's Office concurs, that defendant's theft of client funds and use of insider information to repay these monies is part of the same criminality. The Court added the $1,909,000 amount of the underlying loss to the fraud calculus in recognition of this fact. Therefore, the Court finds that defendant has a criminal history of I as contemplated by the Guidelines.

The sentence departs from the guideline range because the Court determines that the sentencing calculus set forth in the Presentence Investigation is driven by Counts 55, 56, and 57 — the money laundering counts — of the Indictment. In the Court's view, this is not the type of case contemplated by the United States Sentencing Commission when it established the guidelines for the offense of money laundering. Accordingly, the Court grants a 2 level downward departure.

The Court has given 75% credit for the 30 months served for the related state court convictions. Hence, the defendant shall receive credit for 23 months time served. The Court determines that a 75% credit for time served is warranted since the prior offense was intimately related to the federal crimes.

The Court finds that a fine of $150,000 is appropriate, since defendant does not have the ability to pay a fine above this amount.

TIMELINE OF IMPORTANT EVENTS

August 18, 1988

(1) Dorfman announces on CNN that insiders at Grand Met indicate that Grand Met interested in acquiring Pillsbury;

(2) Considine advises Appellant that he had received from an individual in London a $9 million order to purchase 250,000 shares of Pillsbury.

August 18, 1988—August 25, 1988

Between these dates, Appellant places *all* of his orders for options on Pillsbury stock.

August 26, 1988

Alleged conversation between Tinkham and Appellant wherein Appellant allegedly learned of Dorsey & Whitney's retention by some unknown client regarding the possible acquisition of Pillsbury.

September 9, 1988

Tinkham learns that Grand Met's possible acquisition may be by way of hostile takeover.

September 30, 1988

Grand Met sells hotel subsidiary, making possible its purchase of Pillsbury.

October 3, 1988

Grand Met board of directors authorizes tender offer for Pillsbury.

December 15, 1992

Appellant indicted in this case.

Supreme Court of the United States

No. 96-842

UNITED STATES, *PETITIONER*

v.

JAMES HERMAN O'HAGAN

ORDER ALLOWING CERTIORARI.
Filed January 17, 1997.

The petition for a writ of certiorari is granted. The brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 28, 1997. The brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 28, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, April 9, 1997. Rule 29.2 does not apply.

January 17, 1997